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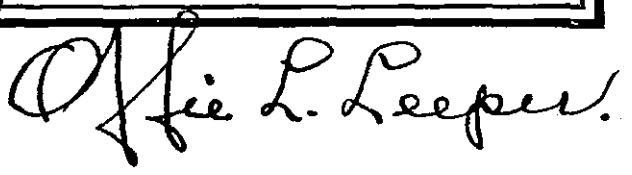
WAR DEPARTMENT

BASIC FIELD MANUAL

RULES OF LAND WARFARE



BASIC FIELD MANUAL

RULES OF LAND WARFARE

CHANGES No. 1

WAR DEPARTMENT,
WASHINGTON 25, D. C., 15 November 1944.

FM 27–10, 1 October 1940, is changed as follows:

345.1. Liability of offending individuals (Added).—Individuals and organizations who violate the accepted laws and customs of war may be punished therefor. However, the fact that the acts complained of were done pursuant to order of a superior or government sanction may be taken into consideration in determining culpability, either by way of defense or in mitigation of punishment. The person giving such orders may also be punished.

347. Offenses by armed forces.—The principal offenses * * * inhabitants in occupied territory.

[AG 300.7 (1 Nov 44).]

BY ORDER OF THE SECRETARY OF WAR:

G. C. MARSHALL,
Chief of Staff.

OFFICIAL:

J. A. ULIO,
Major General,
The Adjutant General.

DISTRIBUTION:

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FM 27-10

BASIC FIELD MANUAL

RULES OF LAND WARFARE

Prepared under direction of
The Judge Advocate General

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WAR DEPARTMENT,
WASHINGTON, *October 1, 1940.*

FM 27–10, Rules of Land Warfare, is published for the information and guidance of all concerned.

[A. G. 062.11 (6–17–40).]

BY ORDER OF THE SECRETARY OF WAR:

G. C. MARSHALL,
Chief of Staff.

OFFICIAL:

E. S. ADAMS,
Major General,
The Adjutant General.

FOREWORD

Except as hereinafter noted, the official English text or translation of every treaty provision obligatory upon the United States, bearing upon the conduct of the forces in the field, is quoted *verbatim* in the chapter to which it relates. The only exceptions are—

1. The Red Cross conventions of 1864 and 1906, which, although superseded by the Red Cross convention of 1929, chapter 5, as between parties to the latter, continue in force, respectively, as between the United States and such of the other parties to each of the former, as have not ratified or adhered to the latter;

2. The Hague Convention of 1899, relating to the laws and customs of war on land (first international peace conference), which, although superseded by Hague Convention No. IV of 1907 (second international peace conference), herein quoted, as between parties to the latter, continues in force as between the United States and such of the other parties to the former as have not yet ratified or adhered to the latter; and

3. Chapter II of the annex to Hague Convention No. IV of October 18, 1907, relating to prisoners of war (excepting arts. 10, 11, and 12 relating to paroles; pars. 148, 154, 156), which, although in effect superseded by the Geneva convention of July 27, 1929, upon the same subject, chapter 4, as between parties to the latter, continues in force as between the United States and such of the other parties to the former as have not ratified or adhered to the latter.

The essential provisions of each of the antecedent conventions mentioned in 1 and 2 above, and of chapter II of the annex to Hague Convention No. IV (excepting the three articles above mentioned), have been substantially reincorporated within the more recent and more comprehensive conventions on the same subject, so that observance of the latter practically includes observance of the former. For this reason, and in view of the

general rule prescribed by paragraph 5, only the most recent convention on each of these subjects is quoted in this publication, saving the three articles on paroles above mentioned.

Under the general rule last above mentioned, pertinent information concerning ratifications, adherences, reservations, and denunciations (withdrawals) will be specially notified by higher authority to the commanders in the field, as occasions arise, thus rendering unnecessary the inclusion of such data in this text, and avoiding the frequent changes that such inclusion would entail.

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G.P.W.—Geneva convention of July 27, 1929, relative to the treatment of prisoners of war; *Treaty Series No. 846; 47 Stat.* 233; Treaties, etc., between the U. S. and other Powers, 1923–1937, Vol. IV, 5224.*

G.W.S.—Geneva (Red Cross) convention of July 27, 1929, for the amelioration of the condition of the wounded and sick of armies in the field; *Treaty Series No. 847; 47 Stat.* 286; Treaties, etc., between the U. S. and other Powers, 1923–1937, Vol. IV, 5209.*

H. III.—Hague Convention No. III of October 18, 1907, relating to the opening of hostilities; *Treaty Series No. 538; 36 Stat.* 2259; Malloy, Treaties, Vol. II, 2259.*

H. IV.—Hague Convention No. IV of October 18, 1907, respecting the laws and customs of war on land; *Treaty Series No. 539; 36 Stat.* 2277; Malloy, Treaties, Vol. II, 2269.*

H. V.—Hague Convention No. V of October 18, 1907, respecting the rights and duties of neutral powers and persons in case of war on land; *Treaty Series No. 540; 36 Stat.* 2310; Malloy, Treaties, Vol. II, 2290.*

H. VIII.—Hague Convention No. VIII of October 18, 1907, relative to the laying of automatic submarine contact mines; *Treaty Series No. 541; 36 Stat.* 2332; Malloy, Treaties, Vol. II, 2304.*

H. IX.—Hague Convention No. IX of October 18, 1907, concerning bombardment by naval forces in time of war; *Treaty Series No. 542; 36 Stat.* 2351; Malloy, Treaties, Vol. II, 2314.*

H.D. XIV.—Hague Declaration No. XIV of October 18, 1907, prohibiting the discharge of projectiles and explosives from balloons; *Treaty Series No. 546; 36 Stat.* 2439; Malloy, Treaties, Vol. II, 2366.*

H.R.—Annex to Hague Convention No. IV of October 18, 1907, embodying the regulations respecting the laws and customs of war on land adopted by that convention; *Treaty Series No. 539; 36 Stat.* 2295; Malloy, Treaties, Vol. II, 2281.*

*United States Statutes at Large.

BASIC FIELD MANUAL

RULES OF LAND WARFARE

(The matter contained herein supersedes BFM, Vol. VII, part two, January 2, 1934).

CHAPTER 1

BASIC RULES AND PRINCIPLES

1. General.—Among civilized nations the conduct of war is regulated by certain well-established rules known as the rules or laws of war. These rules cover and regulate warfare both on land and sea. Those which pertain particularly to war on land are called the rules of land warfare. It is the latter with which this manual is concerned.

2. Written rules.—Many of the rules of war have been set forth in treaties or conventions to which the United States and other nations are parties. These are commonly called the written rules or laws of war.

3. Unwritten rules.—Some of the rules of war have never yet been incorporated in any treaty or convention to which the United States is signatory. These are commonly called the unwritten rules or laws of war, although they are well defined by recognized authorities on international law and well established by the custom and usage of civilized nations.

4. Basic principles.—Among the so-called unwritten rules or laws of war are three interdependent basic principles that underlie all of the other rules or laws of civilized warfare, both written and unwritten, and form the general guide for conduct where no more specific rule applies, to wit:

a. The *principle of military necessity*, under which, subject to the principles of humanity and chivalry, a belligerent is justified in applying any amount and any kind of force to compel the complete submission of the enemy with the least possible expenditure of time, life, and money;

b. The *principle of humanity*, prohibiting employment of any such kind or degree of violence as is not actually necessary for the purpose of the war; and

c. The *principle of chivalry*, which denounces and forbids resort to dishonorable means, expedients, or conduct.

5. Force of rules.—*a.* The unwritten rules are binding upon all civilized nations. They will be strictly observed by our forces, subject only to such exceptions as shall have been directed by competent authority by way of legitimate reprisals for illegal conduct of the enemy. (See par. 358.)

b. Technically each of the written rules is binding only between powers that have ratified or adhered to, and have not thereafter denounced (withdrawn from), the treaty or convention by which the rule is prescribed, and is binding only to the extent permitted by the reservations, if any, that have accompanied such ratification or adherence on either side. However, the written rules herein quoted in bold-faced type are all prescribed by treaties or conventions each of which has been ratified without reservation, and not thus far denounced, by the United States and many other nations. They are in large part but formal and specific applications of general principles of the unwritten rules. While solemnly obligatory as between the signatory powers, they may be said also to represent the consensus of modern international public opinion as to how belligerents and neutrals should conduct themselves in the particulars indicated. As a general rule they will be strictly observed and enforced by United States forces in the field, as far as applicable there, without regard to whether they are legally binding upon all of the powers immediately concerned. It is the responsibility of higher authority, as occasions arise, to determine and to instruct the commander in the field, which, if any, of the written rules herein quoted are not legally binding as between the United States and each of the other powers immediately concerned, and which, if any, for that reason are not for the time being to be observed or enforced.

6. Military government and martial law distinguished.—Military government is that form of government which is established and maintained by a belligerent by force of arms over occupied territory of the enemy and over the inhabitants thereof. In this definition the term "territory of the enemy"

includes not only the territory of an enemy nation, but also domestic territory recovered by military occupation from rebels treated as belligerents.

Martial law is the temporary government of the civil population through the military forces as necessity may require in domestic territory as distinguished from occupied territory of an enemy recognized as a belligerent.

So far as the United States forces are concerned, military government and martial law are exercised by the military commander under the direction of the President, as Commander in Chief of the Army and Navy.

The most prominent distinction between military government and martial law is, that the former is exercised only in the territory of a hostile belligerent and is within the realm of international law, while the latter is invoked only in domestic territory whose local government and inhabitants are not treated or recognized as belligerents.

7. **Military jurisdiction.**—Military jurisdiction is of two kinds: First, that which is conferred and defined by statute; second, that which is derived from the common law of war. The character of the courts which have jurisdiction over military offenses depends upon the local laws of each particular country.

In the armies of the United States, military jurisdiction is exercised through the following military tribunals:

a. Courts martial.

b. Military commissions.

c. Provost courts.

While general courts martial have concurrent jurisdiction with military commissions and provost courts to try any offender who by the law of war is subject to trial by military tribunals, it has generally been held that military commissions have no jurisdiction of such purely military offenses specified in the Articles of War as those articles expressly make punishable by sentence of court martial (except where the military commission is also given express statutory jurisdiction over the offense (A. W. 80, 81, 82)). In practice, offenders who are not subject to the Articles of War, but who by the law of war are subject to trial by military tribunals, are tried by military commissions or provost courts.

CHAPTER 2

QUALIFICATIONS OF ARMED FORCES OF BELLIGERENTS

8. **General division of enemy population.**—The enemy population is divided in war into two general classes, known as the *armed forces* and the *peaceful population.* Both classes have distinct rights, duties, and disabilities, and no person can belong to both classes at one and the same time.

9. **Lawful belligerents.**—*a. Armies, militia, and volunteer corps.*—The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions:

1. To be commanded by a person responsible for his subordinates;

2. To have a fixed distinctive emblem recognizable at a distance;

3. To carry arms openly; and

4. To conduct their operations in accordance with the laws and usages of war. In countries where militia or volunteer corps constitute the army, or form part of it, they are included under the denomination "army" *(H. R., art. 1).*

b. Levée en masse.—The inhabitants of a territory which has not been occupied, who, on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to organize themselves in accordance with article 1, shall be regarded as belligerents if they carry arms openly and if they respect the laws and customs of war *(H. R., art. 2).*

c. Combatants and noncombatants.—The armed forces of the belligerent parties may consist of combatants and noncombatants. In the case of capture by the enemy, both have a right to be treated as prisoners of war *(H. R., art. 3).*

10. **Treatment as brigands, etc., forbidden.**—No belligerent has the right to declare that he will treat every captured man in arms of a *levée en masse* as a brigand or bandit.

11. **Deserters, etc., not to enjoy immunity.**—Certain classes of those forming part of a *levée en masse* cannot claim the privileges accorded in paragraph 9*b*. Among these are deserters

from, or subjects of, the invading belligerent, and persons who are known to have violated the laws and customs of war.

12. **Uprisings in occupied territory.**—If the people of a country, or any portion thereof, already occupied by an army, rise against it, they are violators of the laws of war, and are not entitled to their protection.

13. **Determination of status of captured troops.**—The determination of the status of captured troops is to be left to higher military authority or to military tribunals. Summary executions are no longer contemplated under the laws of war. The officer's duty is to hold the persons of those captured and leave the question of their being regulars, irregulars, deserters, etc., to the determination of competent authority.

CHAPTER 3

HOSTILITIES

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SECTION I

COMMENCEMENT OF HOSTILITIES

14. **Declaration of war required.—The contracting powers recognize that hostilities between themselves must not commence without previous and explicit warning, in the form either of a reasoned declaration of war or of an ultimatum with conditional declaration of war *(H. III, art. 1).***

15. **Surprise still possible.**—Nothing in the foregoing rule requires that any particular length of time shall elapse between declaration of war and the commencement of hostilities. It is still possible, therefore, to make a sudden and unexpected declaration of war and thus surprise an unprepared enemy.

16. **Notification to neutrals.—The existence of a state of war must be notified to the neutral powers without delay, and shall not take effect in regard to them until after the receipt of a notification, which may, however, be given by telegraph. Neutral powers, nevertheless, cannot rely on the absence of notification if it is clearly established that they were in fact aware of the existence of a state of war *(H. III, art. 2).***

17. **When articles effective between parties.**—Article 1 (see par. 14) of the present convention shall take effect in case of war between two or more of the contracting powers. Article 2 (see par. 16) is binding as between a belligerent power which is a party to the convention and neutral powers which are also parties to the convention *(H. III, art. 3).*

18. **Legal and commercial importance of above articles.**—This convention (H. III) is important from both the legal and commercial points of view since it requires belligerents themselves publicly to announce a definite date for the commencement of hostilities, from which date they become entitled to exercise the rights of belligerency, are themselves required to respect the rights of neutrals, and may exact from neutrals compliance with the obligations of neutrality.

19. **Status of civilian population.**—It is now universally recognized that hostilities are restricted to the armed forces of belligerents. Inhabitants who refrain from acts of hostility and pursue their ordinary vocations must be distinguished from the armed forces of the belligerent; must be treated leniently; must not be injured in their lives or liberty, except for cause and after due trial; and must not, as a rule, be deprived of their private property.

20. **Detention and internment.**—Enemy subjects located or resident in our territory are not made prisoners *en masse* on the breaking out of hostilities. Persons known to be active or reserve officers, or reservists, of the hostile army, as well as persons suspected of communicating with the enemy, will be detained and, if deemed advisable, interned on the ground of self-preservation in the exercise of the *right of control.*

21. **Expulsion.**—In modern practice the expulsion of the citizens or subjects of the enemy is generally decreed from seaports, fortresses, defended areas, and the actual or contemplated theaters of operation. The practice as to expulsion from other territory is not uniform, expulsion being resorted to usually for grave reasons of state only. When decreed, the persons expelled should be given such reasonable notice, consistent with public safety, as will enable them to arrange for the collection, disposal, and removal of their goods and property.

SECTION II

CONDUCT OF HOSTILITIES

MILITARY NECESSITY

22. Object of war.—The object of war is to bring about the complete submission of the enemy as soon as possible by means of regulated violence.

23. Military necessity.—Military necessity justifies a resort to all the measures which are indispensable for securing this object and which are not forbidden by the modern laws and customs of war.

24. Measures justified by military necessity.—Military necessity admits of—

a. All direct destruction of life or limb of *armed* enemies, and of other persons whose destruction is incidentally unavoidable in the armed contests of war.

b. The capturing of every armed enemy, and of every enemy of importance to the hostile government, or of peculiar danger to the captor.

c. The destruction of property, if demanded by the necessities of war; the obstruction of ways and channels of traffic, travel, or communication; and the withholding of sustenance or means of life from the enemy.

d. The appropriation of whatever the enemy's country affords that is necessary for the subsistence and safety of the army.

e. Such deception as does not involve the breaking of good faith, either positively pledged, regarding agreements entered into during the war, or supposed by the modern law of war to exist.

25. Measures not justified by military necessity.—Military necessity does not admit of cruelty—that is, the infliction of suffering merely for spite or revenge; nor of maiming or wounding except in combat; nor of torture to extort confessions. It does not admit of the use of poison in any way, nor of the wanton devastation of a district. It admits of deception, but disclaims acts of perfidy. The practice of recent years has been to regard the prohibition against the use of poison as not applicable to the use of toxic gases. (See par. 29.)

PROHIBITIONS AND LIMITATIONS

26. Means of injuring the enemy limited.—The right of belligerents to adopt means of injuring the enemy is not unlimited *(H.R., art. 22).*

The means employed are definitely restricted by international declarations and conventions and by the laws and usages of war.

27. Discharging explosives from balloons.—The contracting powers agree to prohibit, for a period extending to the close of the third peace conference, the discharge of projectiles and explosives from balloons or by other new methods of a similar nature *(H. D. XIV, 1907).*

This rule may be said to be of comparatively slight value because it has been ratified by only two of the great powers, namely, the United States and Great Britain, and because its principal object is substantially accomplished by H.R. article 25 (see par. 45), prohibiting bombardment of undefended places. It is not regarded as imposing any restriction upon the use of modern military aircraft against armed forces or defended places.

28. Poison.—In addition to the prohibitions provided by special conventions, it is especially forbidden * * * to employ poison or poisoned weapons *(H.R., art. 23, par. (a)).*

Application of rule.—This prohibition extends to the use of means calculated to spread contagious diseases; but does not prohibit measures being taken to dry up springs, to divert rivers and aqueducts from their courses, or to contaminate sources of water by placing dead animals therein or otherwise, provided such contamination is evident or the enemy is informed thereof. Concerning treaty provisions in regard to the use of toxic chemicals see paragraph 29.

29. Gases and chemicals.—The United States is not a party to any treaty, now in force, that prohibits or restricts the use in warfare of toxic or nontoxic gases, or of smoke or incendiary materials, etc. A treaty signed at Washington, February 6, 1922, on behalf of the United States, the British Empire, France, Italy, and Japan (Malloy, Treaties, vol. III, p. 3116), contains a provision (art. V) prohibiting "The use in war of asphyxiating, poisonous or other gases, and all analogous liquids, materials, or devices," but that treaty was expressly conditioned to become

effective only upon ratification by all of the signatory powers, and, although heretofore ratified by all of the signatories except France, having never been ratified by the latter, has never become effective. The protocol "for the prohibition of the use in war of asphyxiating, poisonous, or other gases, and of bacteriological methods of warfare," signed at Geneva June 17, 1925, on behalf of the United States and many other powers (League of Nations Official Journal, Aug. 1925, p. 1159), although ratified or adhered to by, and now effective as between, a considerable number of the signatories, has never thus far been ratified by, and is not in force as to, the United States, Japan, and some other powers.

30. Treachery.—It is especially forbidden * * * to kill or wound treacherously individuals belonging to the hostile nation or army *(H.R., art. 23, par. (b))*.

31. Assassination and outlawry.—The above article is construed as prohibiting assassination, proscription, or outlawry of an enemy, or putting a price upon an enemy's head, as well as offering a reward for an enemy "dead or alive." Offenders have no claim to be treated as combatants, but should be tried as criminals.

32. Injury forbidden after surrender.—It is especially forbidden * * * to kill or wound an enemy who, having laid down his arms, or having no longer means of defense, has surrendered at discretion *(H. R., art. 23, par. (c))*.

33. Refusal of quarter.—It is especially forbidden * * * to declare that no quarter will be given *(H. R., art. 23, par. (d))*.

34. Employment of arms, etc., causing unnecessary injury.—It is especially forbidden * * * to employ arms, projectiles, or material calculated to cause unnecessary injury *(H. R., art. 23, par. (e))*.

The foregoing prohibition is not intended to apply to the use of explosives contained in artillery projectiles, mines, aerial torpedoes, or hand grenades, but it does apply to the use of lances with barbed heads, irregular-shaped bullets, and projectiles filled with glass, to the use of any substance on bullets that would tend unnecessarily to inflame a wound inflicted by them, and to the scoring of the surface or filing off the ends of the hard cases of bullets.

35. Train wrecking, etc.—Train wrecking and burning of camps or military depots are legitimate means of injuring the enemy when carried out by the members of the armed forces. Wrecking of trains should be limited strictly to cases which tend directly to weaken the enemy's military forces.

36. Subjects not to be compelled to take part in operations against their own country.—A belligerent is likewise forbidden to compel the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war *(H. R., art. 23, last par.)*.

With respect to the impressment of guides see paragraph 308.

STRATAGEMS

37. Stratagems permissible.—Ruses of war and the employment of measures necessary for obtaining information about the enemy and the country are considered permissible *(H. R., art. 24)*.

38. Good faith.—Absolute good faith with the enemy must be observed as a rule of conduct; but this does not prevent measures such as using spies, or inducing the enemy's soldiers to desert, surrender, or rebel. In general, a belligerent may resort to those measures for mystifying or misleading the enemy against which the enemy ought to take measures to protect himself. (See pars. 39, 40, 41.)

39. Treachery or perfidy.—The ruses of war are legitimate so long as they do not involve treachery or perfidy on the part of the belligerent resorting to them. They are, however, forbidden if they contravene any generally accepted rule.

The line of demarcation between legitimate ruses and forbidden acts of treachery and perfidy is sometimes rather indistinct, but the following examples will indicate the correct principles. It would be an improper practice to secure an advantage of the enemy by deliberate lying which involves a breach of faith, or when there is a moral obligation to speak the truth, such as declaring that an armistice had been agreed upon when such is not the case. On the other hand, it is a perfectly proper ruse to summon a force to surrender on the ground that it is surrounded and thereby induce such surrender with a small force.

40. Legitimate ruses.—Among legitimate ruses may be counted surprises, ambushes, feigning attacks, retreats, or flights, simulating quiet and inactivity, giving large outposts or a strong advance guard to a small force, constructing works, bridges, etc., which it is not intended to use, transmitting false or misleading signals and telegraph messages, and sending false dispatches and newspapers, with a view to their being intercepted by the enemy, lighting campfires where there are no troops, making use of the enemy's signals, bugle and trumpet calls, watch words, and words of command, pretending to communicate with troops or reinforcements which have no existence, moving landmarks, putting up dummy guns or laying dummy mines, removing badges from uniforms, clothing the men of a single unit in the uniform of several different units so that prisoners and dead may give the idea of a large force.

41. Misuse of flags, insignia, military uniforms of enemy.—It is especially forbidden * * * to make improper use of a flag of truce, of the national flag, or of the military insignia and uniform of the enemy, as well as of the distinctive badges of the Geneva convention *(H. R., art. 23, par. (f))*.

42. Flags of truce.—Flags of truce must not be used surreptitiously to obtain military information or merely to obtain time to effect a retreat or secure reinforcements or to feign a surrender in order to surprise an enemy. An officer receiving them is not on this account absolved from the duty of exercising proper precautions with regard to them.

43. National flags, insignia, and uniforms as a ruse.—In practice it has been authorized to make use of these as a ruse. The foregoing rule (par. 41) does not prohibit such use, but does prohibit their *improper use.* It is certainly forbidden to make use of them during a combat. Before opening fire upon the enemy they must be discarded.

44. Improper use of distinctive emblem of Geneva convention.—The use of the emblem of the Red Cross must be limited to the protection and designation of sanitary formations and establishments and the personnel and *matériel* which the Geneva convention provides shall be respected. As examples of the improper use of the emblem may be cited the following: Using a hospital or other building accorded such protection as an observatory or military office or store; firing from a build-

ing or tent displaying the emblem of the Red Cross; using a hospital train to facilitate the escape of combatants; displaying the emblem on wagons containing ammunition or nonmedical stores; and in general, using it for cloaking acts of hostility. (See pars. 196, 198.)

BOMBARDMENTS, ASSAULTS, AND SIEGES

45. Bombardment of undefended places forbidden.—The attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended is prohibited *(H. R., art. 25).*

46. Use of balloons.—The addition of the words "by whatever means" was for the purpose of making it clear that the bombardment of these undefended localities from balloons or airplanes is prohibited.

47. Defended place defined.—Investment, bombardment, assault, and siege have always been recognized as legitimate means of warfare, but under the foregoing rule (par. 45) their use is limited to defended places which certainly will include the following:

a. A fort or fortified place.

b. A town surrounded by detached forts, which is considered jointly with such forts as an indivisible whole.

c. A place that is occupied by a combatant military force or through which such a force is passing. The occupation of such a place by sanitary troops alone is not sufficient to make it a defended place.

48. Throwing projectiles from aircraft on combatants and defended places.—There is no prohibition of general application among the great powers against the discharge of authorized projectiles from aircraft against combatant troops or defended places. (See H. D. XIV (par. 27).)

49. Notice of bombardment.—The officer in command of an attacking force must, before commencing a bombardment, except in cases of assault, do all in his power to warn the authorities *(H. R., art. 26).*

This rule is understood to refer only to bombardments of places where parts of the civil population remain.

50. American rule.—It is no infraction of the unwritten law of war to omit thus to inform the enemy. Nevertheless, even

when belligerents are not subject to the above treaty, the commanders of American forces, when admissible, will inform the enemy of their intention to bombard a place, so that the noncombatants, especially the women and children, may be removed before the bombardment commences.

51. Permitting population to leave besieged place.—There is no rule of law which compels the commander of an investing force to permit the population, including women, children, aged, sick, wounded, subjects of neutral powers, or temporary residents, to leave the besieged locality, even when a bombardment is about to commence. It is entirely within the discretion of the besieging commander whether he will permit them to leave and under what conditions.

52. Diplomatic agents of neutrals.—Diplomatic agents of a neutral power should not be prevented from leaving a besieged place before hostilities commence. This privilege cannot be claimed while hostilities are in progress. The same privileges should properly be accorded to a consular officer of a neutral power. Should they voluntarily decide to remain, they must undergo the same treatment as other inhabitants.

53. Persons in zone between troops.—Persons dwelling in the zone between the opposing forces in the first stages of siege are treated as inhabitants of the invaded locality.

54. Individuals leaving without permission.—Individuals who attempt to leave or enter a besieged place without obtaining the necessary permission are liable to be fired on and may be sent back into the besieged place or detained and put on trial.

55. Expelled persons forced to return.—When a commander of a besieged place expels the noncombatants, in order to lessen the number of those who consume his stock of provisions, it is lawful, though an extreme measure, to drive them back, so as to hasten the surrender.

56. Population expelled under fire.—It is not necessary to cease or relax fire because the enemy sends women and children out of his lines in order to get them to a place of safety, but fire must not be intentionally opened in their direction.

57. Communication with besieged place.—The commander of the investing force has the absolute right to forbid all communication between the besieged place and the outside. The application of this rule to diplomatic envoys of neutral powers is unsettled.

58. Buildings dedicated to religious works, etc., to be spared.—**In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, provided that they are not being used at the time for military purposes.**

It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand *(H.R., art. 27).*

59. Above buildings, etc., to display sign specified in naval treaty.—**It is the duty of the inhabitants to indicate such monuments, edifices, or places by visible signs, which shall consist of large stiff rectangular panels divided diagonally into two colored triangular portions, the upper portion black, the lower portion white *(H. IX, art. 5, par. 2, 1907).***

The foregoing rule adopted in this convention for naval warfare should be adopted for protecting buildings under bombardment in land warfare.

60. Forfeiture of inviolability.—The besleging forces are not required to observe the signs indicating inviolability of buildings that are known to be used for military purposes, such as quarters for officers and men, observatories, or signaling stations.

61. Pillage forbidden.—**The pillage of a town or place, even when taken by assault, is prohibited *(H. R., art. 28).***

AUTOMATIC SUBMARINE CONTACT MINES

62. Kinds of mines.—There are three general classes of mines:

a. Observation mines which are anchored along the coast and connected therewith by wires by which they can be exploded electrically.

b. Unanchored automatic contact mines which explode by contact.

c. Anchored automatic contact mines which are attached to heavy weights, and which can be placed at any required depth below the surface; these mines are exploded automatically by contact with heavy bodies such as ships.

These rules do not deal with the first class of mines, since they are innocuous to peaceful shipping.

63. Unanchored automatic contact mines.—It is forbidden to lay unanchored automatic contact mines, except where they are so constructed as to become harmless one hour at most after the person who laid them ceases to control them *(H. VIII, art. 1, par. 1).*

64. Commercial navigation.—It is forbidden to lay automatic contact mines off the coast and ports of the enemy, with the sole object of intercepting commercial shipping *(H. VIII, art. 2).*

It is not probable that a belligerent resorting to the use of these contact mines off the coast and ports of his enemy will hesitate to disavow the intention of intercepting commercial navigation. In its present form this rule permits the use of such mines so as to cause great risks to neutral navigation.

65. Anchored automatic contact mines.—It is forbidden to lay anchored automatic contact mines which do not become harmless as soon as they have broken loose from their moorings *(H. VIII, art. 1, par. 2).*

66. Precautions to be taken.—When anchored automatic contact mines are employed, every possible precaution must be taken for the security of peaceful shipping.

The belligerents undertake to do their utmost to render these mines harmless within a limited time and, should they cease to be under surveillance, to notify the danger zones as soon as military exigencies permit, by a notice addressed to shipowners which must also be communicated to the governments through the diplomatic channel *(H. VIII, art. 3).*

67. Mines of neutral powers.—Neutral powers which lay automatic contact mines off their coasts must observe the same rules and take the same precautions as are imposed on belligerents.

The neutral powers must inform shipowners, by a notice issued in advance, where automatic contact mines have been laid. This notice must be communicated at once to the governments through the diplomatic channel *(H. VIII, art. 4).*

68. Mines to be removed at close of war.—At the close of the war the contracting powers undertake to do their utmost to remove the mines which they had laid, each power removing its own mines.

As regards anchored automatic contact mines laid by one of the belligerents off the coast of the other, their position must be notified to the other party by the powers which laid them, and each power must proceed with the least possible delay to remove the mines in its own waters *(H. VIII, art. 5).*

69. Torpedoes.—It is forbidden to use torpedoes which do not become harmless when they have missed their mark *(H. VIII, art. 1, par. 3).*

CHAPTER 4

PRISONERS OF WAR

70. Definition.—Except as otherwise hereinafter indicated, every person captured or interned by a belligerent power because of the war is, during the period of such captivity or internment, a prisoner of war, and is entitled to be recognized and treated as such under the laws of war.

71. Geneva convention of 1929—relation to Hague Regulations.—In the relations between powers bound by the Hague conventions respecting the laws and customs of war on land, whether it is a question of that of July 29, 1899, or that of October 18, 1907, and who participate in the present convention, this latter shall complete chapter II (Prisoners of War) **of the Regulations annexed to the said Hague conventions *(G. P. W., art. 89).***

However, as indicated in the foreword, page III, the only parts of chapter II of the Hague Regulations, not in effect superseded by substantial reincorporation in the present Geneva convention, are comprised in H. R. 10, 11, and 12, dealing with paroles and hereinafter quoted (pars. 148, 154, 155).

72. Application of the convention.—The present convention shall apply, without prejudice, to the stipulations of title VII (see par. 76*b*) :

(1) To all persons contemplated in articles 1, 2, and 3 of the Regulations annexed to the Hague convention of October 18, 1907, respecting the laws and customs of war on land, and captured by the enemy. (See par. 9*a, b, c.*)

(2) To all persons belonging to the armed forces of the belligerent parties, captured by the enemy in the course of military operations at sea or in the air, except for such derogations as

might be rendered inevitable by the conditions of capture. However, such derogations shall not infringe the fundamental principles of the present convention; they shall cease when the persons captured have entered a prisoners of war camp *(G. P. W., art. 1).*

73. In power of enemy power; treated with humanity; reprisals prohibited.—Prisoners of war are in the power of the enemy power, but not of the individuals or bodies of troops who capture them.

They must at all times be treated with humanity and protected, particularly against acts of violence, insults, and public curiosity.

Measures of reprisal against them are prohibited *(G. P. W., art. 2).*

74. Persons and honor to be respected; retain civil status.—Prisoners of war have the right to have their persons and their honor respected. Women shall be treated with all the regard due to their sex. Prisoners retain their full civil status *(G. P. W., art. 3).*

75. Maintained by captor; discriminations.—The power detaining prisoners of war is bound to provide for their maintenance.

Discriminations in treatment between prisoners are lawful only when they are based on the military rank, state of physical or mental health, professional qualifications, or the sex of those who profit by such discriminations *(G. P. W., art. 4).*

76. Who may become prisoners of war.—*a. The armed forces.*—The armed forces of the belligerent parties may consist of combatants and noncombatants. In the case of capture by the enemy, both have a right to be treated as prisoners of war *(H. R., art. 3).*

b. Individuals who follow the Army.—Individuals who follow armed forces without directly belonging thereto, such as correspondents, newspaper reporters, sutlers, contractors, who fall into the enemy's hands and whom the latter thinks expedient to detain, shall be entitled to be treated as prisoners of war, provided they are in possession of a certificate from the military authorities of the armed forces which they were accompanying *(G. P. W., title VII, art. 81).*

c. Wounded and sick.—**Subject to the care that must be taken of them under the preceding article** ***(art. 1, G. W. S., par. 175)*****; the wounded and sick of an army who fall into the power of the other belligerent shall be prisoners of war, and the general rules of international law in respect to prisoners shall be applicable to them** ***(G. W. S., art. 2).***

d. Levée en masse.—The citizens who rise *en masse* to defend their territory or district from invasion by the enemy, if captured, are entitled to be treated as prisoners of war.

e. High civil functionaries.—High civil functionaries such as the sovereign and members of the royal family, the president or head of a republican state, and the ministers who direct the policy of a state are liable to be made prisoners of war whether accompanying an army or not.

f. Civil officials and diplomatic agents.—Civil officials and diplomatic agents attached to the army may be made prisoners of war.

g. Inhabitants.—Persons whose services are of particular use to the hostile army or its government, such as the higher civil officials, diplomatic agents, couriers, guides, etc., also all persons who may be harmful to the opposing state while at liberty, such as prominent and influential political leaders, journalists, local authorities, clergymen, and teachers, in case they incite the people to resistance, may be made prisoners of war.

h. Hostages.—When a hostage is accepted he is treated as a prisoner of war.

77. Military attachés and agents of neutrals.—Military attachés and diplomatic agents of neutral powers, accompanying an army in the field or found within a captured fortress, are not ordinarily held as prisoners, provided they have proper papers of identification in their possession and take no part in the hostilities. They may, however, be ordered out of the theater of war, and, if necessary, handed over by the captor to the ministers of their respective countries.

78. Must give name and rank; coercion to obtain military information prohibited.—Every prisoner of war is bound to give, if he is questioned on the subject, his true names and rank, or else his serial number.

In case he infringes this rule, he shall be liable to restriction of the privileges accorded to prisoners of his category.

No coercion may be used on prisoners to obtain information relative to the state of their army or country. Prisoners who refuse to answer may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind whatever.

If, because of his physical or mental condition, a prisoner is unable to identify himself, he shall be turned over to the medical authorities *(G. P. W., art. 5).*

79. Effects that may be retained by prisoners.—All effects and objects of personal use—except arms, horses, military equipment and military papers—shall remain in the possession of prisoners of war, as well as metal helmets and gas masks.

Sums in the possession of prisoners may not be taken away from them except by order of an officer and after the amount is determined. A receipt shall be given. Sums thus taken away shall be credited to the account of each prisoner.

Identification tags and cards, insignia of rank, decorations, and objects of value may not be taken from prisoners *(G. P. W., art. 6).*

80. Evacuation.—Prisoners of war shall be evacuated within the shortest possible period after their capture to depots located in a region far enough from the zone of combat for them to be out of danger.

Only prisoners who, because of wounds or sickness, would run greater risks by being evacuated than by remaining where they are may be temporarily kept in a dangerous zone.

Prisoners shall not be needlessly exposed to danger while awaiting their evacuation from a combat zone.

Evacuation of prisoners, on foot, may normally be effected only by stages of 20 kilometers a day, unless the necessity of reaching water and food depots requires longer stages *(G. P. W., art. 7).*

81. Notification of capture of prisoners; correspondence with family.—Belligerents are bound to notify each other reciprocally as soon as possible, through the intermediary of the information bureaus as organized under article 77 (see par. 163) of every capture of prisoners. They are likewise bound to inform each other of the official addresses to which the correspondence from the families to prisoners of war may be sent.

As soon as possible, every prisoner must be enabled to correspond with his family himself, under the conditions provided in article 36 (see par. 109) and following.

As regards prisoners captured at sea, the provisions of the present article shall be observed as soon as possible after arrival at port *(G. P. W., art. 8).*

82. Internment.—Prisoners of war may be interned in a town, fortress, or other place, and bound not to go beyond certain fixed limits. They may also be interned in enclosed camps; they may not be confined or locked up except as an indispensable measure of safety or sanitation, and only while the circumstances which necessitate this measure continue to exist.

Prisoners, captured in unhealthful regions or where the climate is injurious for persons coming from temperate regions, shall be transported, as soon as possible, to a more favorable climate.

Belligerents shall, so far as possible, avoid assembling in a single camp prisoners of different races or nationalities.

No prisoner may, at any time, be sent back into a region where he might be exposed to the fire of a combat zone nor used to give protection from bombardment to certain points or certain regions by his presence *(G. P. W., art. 9).*

83. Installation of camps.—Prisoners of war shall be lodged in buildings or in barracks affording all possible safeguards as to hygiene and healthfulness.

The quarters must be fully protected from dampness, sufficiently heated and lighted. All precautions must be taken against danger of fire.

As to the dormitories, the total area and minimum air space of dormitories, accommodations and bedding therein, shall be the same as those provided for the troops at base camps of the detaining power *(G. P. W., art. 10).*

84. Rations; collective disciplinary measures affecting.—The food ration of prisoners of war shall be equal in quantity and quality to that of troops at base camps.

Furthermore, prisoners shall receive facilities for preparing, themselves, additional food which they may have.

A sufficiency of potable water shall be furnished them. The use of tobacco shall be permitted. Prisoners may be employed in the kitchens.

All collective disciplinary measures affecting the food are prohibited *(G. P. W., art. 11)*.

85. Clothing; canteens.—Outer clothing, underwear, and footwear shall be furnished prisoners of war by the detaining power. Replacement and repair of these articles must be assured regularly. In addition, workers must receive work clothes wherever the nature of the work requires it.

Canteens shall be installed in all camps where prisoners may obtain, at the local market price, food products and ordinary articles.

Profits obtained by the management of the camps from the operation of the canteens shall be used for the benefit of the prisoners *(G. P. W., art. 12)*.

86. Hygiene.—Belligerents shall be bound to take all sanitary measures necessary to assure the cleanliness and healthfulness of camps and to prevent epidemics.

Prisoners of war shall have at their disposal, day and night, installations conforming to sanitary rules and constantly maintained in a state of cleanliness.

Furthermore, in addition to baths and showers with which the camps shall be as well provided as possible, prisoners shall be furnished a sufficient quantity of water to permit of their bodily cleanliness.

They must be enabled to take physical exercises and enjoy the open air *(G. P. W., art. 13)*.

87. Infirmaries.—Every camp shall have an infirmary, where prisoners of war shall receive every kind of attention they need. If necessary, isolation quarters shall be reserved for the sick affected with contagious diseases.

Expenses of treatment, including therein those of temporary prosthetic equipment, shall be borne by the detaining power.

Upon request, belligerents shall be bound to deliver to every prisoner treated an official statement showing the nature and duration of his illness as well as the attention received.

It shall be permissible for belligerents reciprocally to authorize, by means of special arrangements, the retention in the

camps of physicians and hospital attendants to care for prisoners of their own country.

Prisoners affected with a serious illness or whose condition necessitates a major surgical operation must be admitted, at the expense of the detaining power, to any military or civil medical establishment qualified to treat them (*G. P. W., art 14*).

88. Medical inspections.—Medical inspections of prisoners of war shall be held at least once a month. Their purpose shall be to determine the general state of health and cleanliness, and to detect contagious diseases, particularly tuberculosis and venereal diseases (*G. P. W., art. 15*).

89. Religious freedom.—Prisoners of war shall enjoy complete liberty in the exercise of their religion, including attendance at the services of whatever religion they may belong to, on the sole condition that they comply with the measures of order and police issued by the military authorities.

Ministers of a religion, prisoners of war, whatever their religious denomination, shall be allowed to minister fully to their coreligionists (*G. P. W., art. 16*).

90. Recreation.—Belligerents shall encourage as much as possible intellectual recreations and sports organized by prisoners of war (*G. P. W., art. 17*).

91. Camps to be commanded by officers; salutes.—Every prisoner of war camp shall be placed under the command of a responsible officer.

Besides the external marks of respect provided by the regulations in force in their armies with regard to their nationals, prisoners of war must salute all officers of the detaining power.

Officers who are prisoners of war are bound to salute only officers of a higher or equal rank of the detaining power (*G. P. W., art. 18*).

92. Insignia and decorations.—The wearing of insignia of rank and of decorations shall be authorized (*G. P. W., art. 19*).

93. Regulations, orders, etc., to be communicated to prisoners.—Regulations, orders, notices, and proclamations of every kind must be communicated to prisoners of war in a language which they understand. The same principle shall be applied in interrogations (*G. P. W., art. 20*).

94. Officers and persons of assimilated status *(assimilés);* belligerents to notify each other of titles and rank; rank and age to be respected.—Upon the beginning of hostilities, belligerents shall be bound to communicate to each other reciprocally the titles and ranks in use in their respective armies, with a view to assuring equality of treatment between officers and *assimilés* of equivalent rank.

Officers and *assimilés* who are prisoners of war shall be treated with the regard due their rank and age *(G. P. W., art. 21).*

95. Officers' camps; food and clothing.—In order to assure service in officers' camps, soldiers of the same army who are prisoners of war and, as far as possible, who speak the same language shall be assigned thereto, in sufficient numbers, considering the rank of the officers and *assimilés.*

The latter shall procure their food and clothing from the pay which they shall receive from the detaining power. The management of the mess by the officers themselves should be facilitated in every way *(G. P. W., art. 22).*

96. Pay of officers and *assimilés;* rate of exchange; reimbursement.—Subject to special arrangements between the belligerent powers, and particularly those provided in article 24 (see par. 97), officers and *assimil s* who are prisoners of war shall receive from the detaining power the same pay as officers of corresponding rank in the armies of that power, on the condition, however, that such pay does not exceed that to which they are entitled in the armies of the country which they have served. They shall receive such pay in full, once a month if possible, without any deduction being made for expenses chargeable to the detaining power, even if these expenses were made in favor of the said prisoners.

An agreement between the belligerents shall fix the rate of exchange applicable to such payment; in the absence of such an agreement, the rate adopted shall be that in force at the opening of hostilities.

All disbursements made to prisoners of war as pay must be reimbursed, at the end of hostilities, by the power which they have served *(G. P. W., art. 23).*

97. Maximum amount of money retained; balance credited or deposited in bank.—Upon the outbreak of hostilities, the

belligerents shall, by common agreement, fix the maximum amount of ready money which prisoners of war of various ranks and categories shall be allowed to keep in their possession. Any surplus taken or withheld from a prisoner as well as any sum deposited by him shall be credited to his account, and may not be converted into another currency without his consent.

The balance credited to their accounts shall be paid to prisoners of war at the end of their captivity.

During their imprisonment, facilities shall be granted them for the transfer of these amounts, in whole or in part, to banks or private persons in their country of origin *(G. P. W., art. 24)*.

98. Transfer; sick and wounded.—Unless the conduct of military operations so requires, sick and wounded prisoners of war shall not be transferred as long as their recovery might be endangered by the journey *(G. P. W., art. 25)*.

99. Transfer; notification of destination; retention of effects; accounts; expenses.—In case of transfer, prisoners of war shall be officially notified of their new destination in advance; they shall be allowed to take with them their personal effects, their correspondence, and packages which have arrived addressed to them.

All due measures shall be taken that correspondence and packages addressed to their former camp may be forwarded to them without delay.

Sums deposited to the account of transferred prisoners shall be transmitted to the competent authority of the place to which they have been transferred.

The expenses occasioned by the transfer shall be charged to the detaining power *(G. P. W., art. 26)*.

100. Work authorized; exceptions; accidental injuries.—Belligerents may employ as workers, according to their rank and aptitude, all able-bodied prisoners of war with the exception of officers and *assimilés*.

However, if officers and *assimilés* request suitable work, it shall be secured for them so far as is possible.

Noncommissioned officers who are prisoners of war shall only be required to do supervisory work, unless they expressly request a remunerative occupation.

Belligerents shall be bound, during the whole period of captivity, to allow to prisoners of war who are victims of accidents in connection with their work the enjoyment of the benefit of the provisions applicable to workers of the same category according to the legislation of the detaining power. With regard to prisoners of war to whom these legal provisions might not be applied by reason of the legislation of that power, the latter undertakes to recommend to its legislative body all proper measures equitably to indemnify the victims *(G. P. W., art 27)*.

101. Maintenance while working for private persons.—The detaining power shall assume entire responsibility for the maintenance, care, treatment, and payment of wages of prisoners of war working for private individuals *(G. P. W., art. 28)*.

102. Work for prisoner physically unfit prohibited.—No prisoner of war may be employed at work for which he is physically unfit *(G. P. W., art. 29)*.

103. Length of day's work.—The length of the day's work of prisoners of war, including therein the trip going and returning, shall not be excessive and must not, in any case, exceed that allowed for the civil workers in the region employed at the same work. Every prisoner shall be allowed a rest of 24 consecutive hours every week, preferably on Sunday *(G. P. W., art. 30)*.

104. Work related to war operations prohibited; protests for violations.—Work done by prisoners of war shall have no direct relation with war operations. It is forbidden in particular to employ prisoners for manufacturing and transporting arms or munitions of any kind, or for transporting matériel intended for combatant units.

In case of violation of the provisions of the preceding paragraph, prisoners, after executing or beginning to execute the order, shall be free to have their protests presented through the agents whose functions are set forth in articles 43 and 44 (see pars. 116, 117), or, in the absence of an agent, through the intermediary of representatives of the protecting power *(G. P. W., art. 31)*.

105. Unhealthful or dangerous work; aggravation of working conditions as disciplinary measure forbidden.—It is forbidden to use prisoners of war on unhealthful or dangerous work.

Any aggravation of the working conditions as a disciplinary measure is forbidden *(G. P. W., art. 32)*.

106. Work detachments; sanitary conditions, food, etc.—The regime of work detachments must be similar to that of prisoners of war camps, particularly with regard to sanitary conditions, food, attention in case of accident or sickness, correspondence, and the receipt of packages.

Every work detachment shall be attached to a prisoners' camp. The commandant of that camp shall be responsible for the observance, in the work detachment, of the provisions of the present Convention *(G. P. W., art. 33)*.

107. Wages; fixed by agreements; rules for determining payments.—Prisoners of war shall not receive wages for work connected with the administration, installation, and maintenance of the camps.

Prisoners employed for other work shall be entitled to wages to be fixed by agreements between the belligerents.

These agreements shall also specify the part which the camp administration may retain, the amount which shall belong to the prisoner of war, and the manner in which that amount shall be put at his disposal during the period of his captivity.

While awaiting the conclusion of the said agreements, payment for work of prisoners shall be determined according to the rules given below:

a. Work done for the state shall be paid for in accordance with the rates in force for military personnel of the national army doing the same work, or, if none exists, according to a rate in harmony with the work performed.

b. When the work is done for the account of other public administrations or for private persons, conditions shall be regulated by agreement with the military authority.

The balance remaining to the credit of the prisoner shall be delivered to him at the end of his captivity. In case of death, it shall be forwarded through diplomatic channels to the heirs of the deceased *(G. P. W., art. 34)*.

108. External relations—publication of measures.—Upon the outbreak of hostilities, belligerents shall publish the measures provided for the execution of the provisions of this section *(G. P. W., art. 35)*. The provisions referred to are those comprised in paragraphs 109 to 114, inclusive.

109. Correspondence.—Each of the belligerents shall periodically determine the number of letters and postal cards which prisoners of war of the various categories shall be allowed to send each month, and shall inform the other belligerent of this number. These letters and cards shall be transmitted by post by the shortest route. They may not be delayed or retained for disciplinary reasons.

Within a period of not more than one week after his arrival at the camp, and likewise in case of sickness, every prisoner shall be enabled to write his family a postal card informing it of his capture and of the state of his health. The said postal cards shall be forwarded as rapidly as possible and may not be delayed in any manner.

As a general rule, correspondence of prisoners shall be written in their mother tongue. Belligerents may allow correspondence in other languages *(G. P. W., art. 36)*.

110. Postal parcels containing food or clothing.—Prisoners of war shall be allowed individually to receive parcels by mail, containing food and other articles intended to clothe or feed them. Packages shall be delivered to the addressees upon a receipt *(G. P. W., art. 37)*.

111. Letters, postal parcels, gifts, etc., exempt from postal charges, import duties; telegrams.—Letters and consignments of money or valuables, as well as postal parcels intended for prisoners of war or dispatched by them, either directly or through the information bureaus provided for in article 77 (see par. 163), shall be exempt from all postal charges in the countries of origin and destination, as well as in the countries they pass through.

Gifts and relief in kind for prisoners shall be likewise exempt from all import and other duties, as well as from payments for carriage by the state railways.

Prisoners may, in case of acknowledged urgency, be allowed to send telegrams, paying the usual charges *(G. P. W., art. 38)*.

112. Books received subject to censorship.—Prisoners of war shall be allowed to receive shipments of books individually which may be subject to censorship.

Representatives of the protecting powers and duly recognized and authorized aid societies may send works and collections of

books to the libraries of prisoners camps. The transmission of these shipments to libraries may not be delayed under the pretext of censorship difficulties *(G. P. W., art. 39)*.

113. Censorship of correspondence.—Censorship of correspondence must be effected within the shortest possible time. Furthermore, inspection of parcels post must be effected under proper conditions to guarantee the preservation of the articles which they may contain and, if possible, in the presence of the addressee or an agent duly recognized by him.

Prohibitions of correspondence promulgated by the belligerents for military or political reasons must be of a temporary nature only and of the shortest duration possible *(G. P. W., art. 40)*.

114. Transmission of documents; authentication of signatures.—Belligerents shall assure all facilities for the transmission of instruments, papers, or documents intended for prisoners of war or signed by them, particularly of powers of attorney and wills.

They shall take the necessary measures to assure, in case of necessity, the authentication of signatures made by prisoners *(G. P. W., art. 41)*.

115. Complaints.—Prisoners of war shall have the right to inform the military authorities in whose power they are, of their requests with regard to the régime of captivity to which they are subjected.

They shall also have the right to address themselves to representatives of the protecting powers to indicate to them the points on which they have complaints to formulate with regard to the régime of captivity.

These requests and complaints must be transmitted immediately.

Even if they are found to be baseless, they shall not occasion any punishment *(G. P. W., art. 42)*.

116. Agents; intermediaries.—In every place where there are prisoners of war, they shall be allowed to appoint agents entrusted with representing them directly with the military authorities and the protecting powers.

This appointment shall be subject to the approval of the military authority.

The agents shall be entrusted with the reception and distribution of collective shipments. Likewise, in case the prisoners should decide to organize a mutual assistance system among themselves, this organization would be within the competence of the agents. Further, they may lend their services to prisoners to facilitate their relations with the aid societies mentioned in article 78. (See par. 164.)

In camps of officers and *assimilés*, the senior officer prisoner of war in the highest grade shall be recognized as intermediary between the camp authorities and the officers and *assimilés* who are prisoners. For this purpose he shall have the power to appoint an officer prisoner to assist him as an interpreter during the conferences with the camp authorities *(G. P. W., art. 43).*

117. Employment of agents as workers; intercourse with authorities; transfer of agents.—When the agents are employed as workers, the time spent on their duties as representatives of prisoners of war shall be included in the compulsory working hours.

All facilities shall be accorded the agents for their intercourse with the military authorities and with the protecting power. This intercourse shall not be limited.

No representative of the prisoners may be transferred without the necessary time being allowed him to acquaint his successors with current matters *(G. P. W., art. 44).*

118. Prisoners subject to laws and regulations of detaining power.—Prisoners of war shall be subject to the laws, regulations, and orders in force in the armies of the detaining power.

Any act of insubordination shall justify the adoption towards them of the measures provided by such laws, regulations, and orders.

The provisions of the present chapter, however, are controlling *(G. P. W., art. 45).*

The provisions here indicated are those quoted in paragraphs 119 to 140, inclusive.

119. Punishments; limitations; corporal; collective.—Punishments other than those provided for the same acts for soldiers of the national armies may not be imposed upon prisoners of war by the military authorities and courts of the detaining power.

Officers, noncommissioned officers, or soldiers who are prisoners of war undergoing disciplinary punishment shall not receive less favorable treatment than that provided in connection with the same punishment for those of equal rank in the army.

Any corporal punishment, any imprisonment in quarters without daylight, and, in general, any form whatever of cruelty is forbidden.

Collective punishment for individual acts is also forbidden *(G. P. W., art. 46).*

120. Verification of offenses; preliminary judicial proceedings; imprisonment pending trial deducted.—Acts constituting an offense against discipline, and particularly, attempted escape, shall be verified immediately; for all prisoners of war, commissioned or not, preventive arrest shall be reduced to the absolute minimum.

Preliminary judicial proceedings against prisoners of war shall be conducted as rapidly as the circumstances permit. Imprisonment pending trial shall be restricted as much as possible.

In all cases the period of imprisonment pending trial shall be deducted from the disciplinary or the judicial punishment inflicted, in so far as such deduction is allowed for national soldiers *(G. W. P., art. 47).*

121. Treatment after punishment; attempted escape.—Prisoners of war may not be treated differently from other prisoners after having suffered the judicial or disciplinary punishment which has been imposed on them.

Nevertheless, prisoners punished as a result of attempted escape may be subjected to special surveillance, which, however, may not entail the suppression of the guaranties granted prisoners by the present convention *(G. P. W., art. 48).*

122. Not to be deprived of rank; officers and *assimilés* undergoing punishment not to be confined with enlisted men.—No prisoner of war may be deprived of his rank by the detaining power.

Prisoners given disciplinary punishment may not be deprived of the prerogatives attached to their rank. In particular, officers and *assimilés* who suffer punishment involving depri-

vation of liberty shall not be placed in the same quarters as non-commissioned officers or privates undergoing punishment *(G. P. W., art. 49)*.

123. Escaped prisoners recaptured, subject to punishment.—Escaped prisoners of war who are retaken before being able to rejoin their own army or to leave the territory occupied by the army which captured them shall be liable only to disciplinary punishment.

Prisoners who, after having succeeded in rejoining their army or in leaving the territory occupied by the army which captured them, may again be taken prisoners shall not be liable to any punishment on account of their previous flight *(G. P. W., art. 50)*.

124. Attempted escape as incident to other offenses; assisting in escape.—Attempted escape, even if it is not a first offense, shall not be considered as an aggravating circumstance in case the prisoner of war should be given over to the courts on account of crimes or offenses against persons or property committed in the course of that attempt.

After an attempted or accomplished escape, the comrades of the person escaping who assisted in the escape may incur only disciplinary punishment on this account *(G. P. W., art. 51)*.

125. Leniency in deciding whether judicial or summary punishment be imposed; dual punishment forbidden.—Belligerents shall see that the competent authorities exercise the greatest leniency in deciding the question of whether an infraction committed by a prisoner of war should be punished summarily or judicially.

This shall be the case especially when it is a question of deciding on facts in connection with escape or attempted escape.

A prisoner may not be punished more than once because of the same offense or on the same charge *(G. P. W., art. 52)*.

126. Summary punishment not to delay repatriation; penal prosecution, contra; lists of latter cases to be exchanged by belligerents.—No prisoner of war on whom a summary punishment has been imposed, who might be eligible for repatriation, may be kept back because he has not undergone the punishment.

Prisoners to be repatriated who may be undergoing a penal prosecution may be excluded from repatriation until the end of

the proceedings and, if necessary, until the completion of the punishment; those who may be already imprisoned by virtue of a sentence may be detained until the end of their imprisonment.

Belligerents shall communicate to each other the lists of those who for the reasons given in the preceding paragraph cannot be repatriated *(G. P. W., art. 53)*.

127. Maximum summary punishments.—Arrest is the most severe summary punishment which may be imposed on a prisoner of war.

The duration of a single punishment may not exceed 30 days.

Furthermore, this maximum of 30 days may not be exceeded in the case of a prisoner subjected at one time to summary punishment for several acts, whether these acts be connected or not.

When, during or after the end of a period of arrest, a prisoner shall have a new summary punishment imposed upon him, a space of at least 3 days shall separate each of the periods of arrest, if one of them is 10 days or more *(G. P. W., art. 54)*.

128. Food restrictions as punishment.—Subject to the provision which is the subject of the last paragraph of article 11 (see par. 84), food restrictions allowed in the armies of the detaining power are applicable, as an increase of punishment, to prisoners of war given summary punishment.

However, these restrictions may be ordered only if the state of health of the prisoners punished permits it *(G. P. W., art. 55)*.

129. Transfer to penitentiaries, convict prisons, etc., prohibited; sanitary requirements; exercise.—In no case may prisoners of war be transferred to penitentiary establishments (prisons, penitentiaries, convict prisons, etc.) there to undergo summary punishment.

The quarters in which summary punishment is undergone shall conform to sanitary requirements.

Prisoners punished shall be enabled to keep themselves in a state of cleanliness.

These prisoners shall be allowed to exercise or to stay in the open air at least 2 hours every day *(G. P. W., art. 56)*.

130. Correspondence; delivery of packages.—Prisoners of war given summary punishment shall be allowed to read and write, as well as to send and receive letters.

On the other hand, delivery to the addressees of packages and money sent may be withheld until the expiration of the punishment. If the packages not delivered contain perishable products, these shall be turned over to the camp infirmary or kitchen *(G. P. W., art. 57)*.

131. Medical inspection.—Prisoners of war given summary punishment shall be allowed, on their request, to be present at the daily medical inspection. They shall receive the care considered necessary by the doctors and, if necessary, shall be evacuated to the camp infirmary or to hospitals *(G. P. W., art. 58)*.

132. Summary punishment to be imposed only by officers vested with disciplinary authority.—Under reservation of the rights to courts and superior military authorities to exercise their legitimate functions, summary punishment shall only be pronounced by an officer vested with disciplinary authority in his capacity as commander of a camp or of a detachment, or by the responsible officer replacing him *(G.P.W., art. 59)*.

133. Judicial prosecutions; notice to protecting power.—At the opening of a judicial proceeding directed against a prisoner of war, the detaining power shall advise the representative of the protecting power thereof as soon as possible, and always before the date set for the opening of the trial.

This advice shall contain the following information:

(a) Civil status and rank of prisoner;

(b) Place of sojourn or imprisonment;

(c) Statement of the charges and specifications, with notice of the legal provisions applicable.

If it is not possible to indicate in such notice the court which will pass upon the matter, the date of opening of the trial and the place where it will take place, this information must be furnished to the representative of the protecting power later, as soon as possible, and at all events, at least 3 weeks before the opening of the trial *(G.P.W., art. 60)*.

134. Right to defend; not compelled to admit guilt.—No prisoner of war may be sentenced without having had an opportunity to defend himself.

No prisoner may be compelled to admit himself guilty of the act of which he is accused (*G.P.W., art. 61*).

135. Right to counsel; interpreter; representative of protecting power may attend trial; exception.—The prisoner of war shall have the right to assistance by a qualified counsel of his choice and, if necessary, to have recourse to the services of a competent interpreter. He shall be advised of his right by the detaining power, in due time before the trial.

In default of a choice by the prisoner, the protecting power may obtain a counsel for him. The detaining power shall deliver to the protecting power, on its request, a list of persons qualified to present the defense.

Representatives of the protecting power shall be entitled to attend the trial of the case.

The only exception to this rule is the case where the trial of the case must be secret in the interest of the safety of the State. The detaining power shall so advise the protecting power (*G.P.W., art. 62*).

136. What courts to pronounce sentence; procedure.—Sentence may be pronounced against a prisoner of war only by the same courts and according to the same procedure as in the case of persons belonging to the armed forces of the detaining power (*G.P.W., art. 63*).

137. Right to appeal.—Every prisoner of war shall have the right of appeal against any sentence rendered with regard to him, in the same way as individuals belonging to the armed forces of the detaining power (*G.P.W., art. 64*).

138. Notice of sentence to protecting power.—Sentences pronounced against prisoners of war shall be communicated to the protecting power immediately (*G.P.W., art. 65*).

139. Death penalty; notice of; not to be executed for 3 months after notice.—If the death penalty is pronounced against a prisoner of war, a communication setting forth in detail the nature and circumstances of the offense shall be sent as soon as possible to the representative of the protecting power for transmission to the power in whose armies the prisoner served.

The sentence shall not be executed before the expiration of a period of at least 3 months after this communication (*G.P.W., art. 66*).

140. Provisions of article 42 not affected by sentence.—No prisoner of war may be deprived of the benefit of the provisions of article 42 (see par. 115) of the present convention as a result of a sentence or otherwise (*G.P.W., art. 67*).

141. Seriously sick or wounded to be returned to their own country; model agreement regarding repatriation or hospitalization in neutral country.—Belligerents are bound to send back to their own country, regardless of rank or number, seriously sick and severely wounded prisoners of war, after having brought them to a condition where they can be transported.

Agreements between belligerents shall accordingly settle as soon as possible the cases of disability or of sickness, involving direct repatriation, as well as the cases involving possible hospitalization in a neutral country. While awaiting the conclusion of these agreements, belligerents may follow the model agreement annexed, as an exhibit, to the present convention (see par. 172) (*G.P.W., art. 68*).

142. Mixed medical commissions.—Upon the outbreak of hostilities, belligerents shall come to an agreement to name mixed medical commissions. These commissions shall be composed of three members, two of them belonging to a neutral country and one appointed by the detaining power; a physician of the neutral country shall preside. These mixed medical commissions shall proceed to the examination of sick or wounded prisoners and shall make all necessary decisions regarding them.

Decisions of these commissions shall be by majority and carried out with the least possible delay (*G.P.W., art. 69*).

143. Inspection of prisoners with view to direct repatriation.—Besides those who are designated by the camp physician, the following prisoners of war shall be inspected by the mixed medical commission mentioned in article 69 (see par. 142), with a view to their direct repatriation or their hospitalization in a neutral country:

a. Prisoners who make such a request directly of the camp physician.

b. Prisoners who are presented by the agents provided for in article 43 (see par. 116), acting on their own initiative or at the request of the prisoners themselves.

c. Prisoners who have been proposed by the power in whose armies they have served or by an aid society duly recognized and authorized by that power *(G.P.W., art. 70).*

144. Prisoners victims of accidents.—Prisoners of war who are victims of accidents in connection with work, except those who have deliberately injured themselves, shall enjoy the benefit of the same provisions, as far as repatriation or possible hospitalization in a neutral country is concerned *(G.P.W., art. 71).*

145. Able-bodied prisoners held captive for long period.—Throughout the duration of hostilities and from humane considerations, belligerents may conclude agreements with a view to the direct repatriation or hospitalization in a neutral country of able-bodied prisoners of war who have undergone a long period of captivity *(G.P.W., art. 72).*

146. Expenses of repatriation.—The expenses of repatriation or of transportation to a neutral country of prisoners of war shall be borne, from the frontiers of the detaining power, by the power in whose armies the prisoners have served *(G.P.W., art. 73).*

147. Repatriated persons not eligible for active military service.—No repatriated person may be utilized in active military service *(G.P.W., art. 74).*

148. Parole permitted if laws of their country allow.—Prisoners of war may be set at liberty on parole if the laws of their country allow, and, in such cases, they are bound, on their personal honor, scrupulously to fulfill, both toward their own government and the government by whom they were made prisoners, the engagements they have contracted.

In such cases their own government is bound neither to require of nor accept from them any service incompatible with the parole given *(H.R., art. 10).*

149. Form and substance of parole.—The parole should be in writing and signed by the prisoner. It should state in clear and unequivocal language exactly what acts the prisoner is obligated not to do, particularly as to whether he is bound to refrain from all acts against the captor or only from taking part directly in military operations.

150. Parole of enlisted men.—No noncommissioned officer or private can give his parole except through an officer of his own

army. The only admissible exception is where an individual properly separated from his command has suffered long confinement without the possibility of being paroled through an officer.

151. **Parole of commissioned officers.**—Commissioned officers can give their paroles only with the permission of a military superior as long as such superior is accessible.

152. **Parole ineffectual.**—No paroling on the battlefield, no paroling of entire bodies of troops after a battle, and no dismissal of large numbers of prisoners, with a general declaration that they are paroled, is permitted or of any value.

153. **Paroling discretionary with belligerent government.**—A belligerent government may declare, by a general order, whether it will allow paroling, and on what conditions it will allow it. Such order is communicated to the enemy.

154. **Not compelled to accept parole.—A prisoner of war cannot be compelled to accept his liberty on parole; similarly the hostile government is not obliged to accede to the request of the prisoner to be set at liberty on parole *(H.R., art. 11).***

155. **Violation of parole.**—Prisoners of war liberated on parole and recaptured bearing arms against the government to whom they had pledged their honor, or against the allies of that government, forfeit their right to be treated as prisoners of war, and can be brought before the courts *(H.R., art. 12).***

156. **Exchange of prisoners not obligatory.**—The exchange of prisoners is an act of convenience to both belligerents. If no general cartel has been concluded, it cannot be demanded by either of them. No belligerent is obliged to exchange prisoners of war.

157. **When exchange made.**—No exchange of prisoners shall be made except after complete capture, and after an accurate account of them and a list of the captured officers have been taken.

158. **Conditions of exchange.**—Exchanges of prisoners take place, number for number, rank for rank, disability for disability, with added condition for added condition—such, for instance, as not to serve for a certain period.

159. **Substitutions.**—In exchanging prisoners of war such numbers of persons of inferior rank may be substituted as an equivalent for one of superior rank as may be agreed upon by

cartel which requires the sanction of the government or of the commander of the army in the field.

160. Spies, war traitors, and war rebels.—According to the unwritten law of war, spies, war traitors, and war rebels are not exchanged. The exchange of such persons would require a special cartel, authorized by the government, or, at a great distance from it, by the chief commander of the army in the field.

161. Armistice convention to include stipulations regarding repatriation of prisoners; prisoners undergoing punishment; commissions to search for dispersed prisoners.—When belligerents conclude an armistice convention they must as a rule include therein stipulations regarding the repatriation of prisoners of war. If it has not been possible to insert stipulations in this regard in such convention, belligerents shall nevertheless come to an agreement in this regard as soon as possible. In any case, repatriation of prisoners shall be effected with the least possible delay after the conclusion of peace.

Prisoners of war against whom a penal prosecution may be pending for a crime or an offense of municipal law may, however, be detained until the end of the proceedings, and, if necessary, until the expiration of the punishment. The same shall be true of those sentenced for a crime or offense of municipal law.

On agreement between the belligerents, commissions may be established for the purpose of searching for dispersed prisoners and assuring their repatriation *(G.P.W., art. 75).*

162. Wills of prisoners; death certificates; burial.—Wills of prisoners of war shall be received and drawn up in the same way as for soldiers of the national army.

The same rules shall be observed regarding death certificates.

Belligerents shall see that prisoners of war dying in captivity are honorably buried and that the graves bear all necessary information, are respected and properly maintained *(G.P.W., art. 76).*

163. Official information bureau; notification of capture of prisoners; mutual exchange of information, etc.—Upon the outbreak of hostilities, each of the belligerent powers, as well as the neutral powers which have received belligerents, shall

institute an official information bureau regarding prisoners of war within their territory.

Within the shortest possible period, each of the belligerent powers shall inform its information bureau of every capture of prisoners effected by its armies, giving it all available information regarding identity, thereby permitting prompt notification to the families concerned, and informing it of the official addresses at which families may write to prisoners.

The information bureau shall immediately forward all this information to the interested powers, through the intervention, on one hand, of the protecting powers and, on the other, of the central agency provided for in article 79. (See par. 165.)

The information bureau charged with replying to all inquiries about prisoners of war, shall receive from the various services concerned full information respecting internments and transfers, releases on parole, repatriations, escapes, stays in hospitals, deaths, as well as other information necessary to enable it to make out and keep up to date an individual record for each prisoner of war.

The bureau shall state in this return, insofar as is possible and subject to the provisions of article 5 (see par. 78), the serial number, given names and surname, date and place of birth, rank and unit of the interested party, the given name of the father and the name of the mother, the address of the person to be advised in case of accident, wounds, date and place of capture, internment, wounding and death, as well as any other important information.

Weekly lists containing all new information likely to facilitate the identification of each prisoner shall be transmitted to the interested powers.

At the conclusion of peace the individual record of the prisoner of war shall be delivered to the power which he served.

The information bureau shall further be bound to receive all articles of personal use, valuables, letters, pay vouchers, identification marks, etc., which are left by prisoners of war who have been repatriated, released on parole, have escaped or died, and to transmit them to the countries interested *(G.P.W., art. 77)*.

164. Belligerents to extend to relief societies facilities for efficient performance.—Relief societies for prisoners of war,

which are properly constituted in accordance with the laws of their country and with the object of serving as channels for charitable effort, shall receive from the belligerents, for themselves and their duly accredited agents, every facility for the efficient performance of their humane task within the bounds imposed by military necessities. Agents of these societies may be admitted to the camps for the purpose of distributing relief, as also to the halting places of repatriated prisoners, if furnished with a personal permit by the military authorities, and on giving an undertaking in writing to comply with all measures of order and police which the latter may issue *(G.P.W., art. 78).*

165. Central agency for information in neutral countries.—A central agency for information regarding prisoners of war shall be created in a neutral country. The international committee of the Red Cross shall propose the organization of such an agency to the interested powers, if it considers it necessary.

The function of this agency shall be to centralize all information respecting prisoners, which it may obtain through official or private channels; it shall transmit it as quickly as possible to the country of origin of the prisoners or to the power which they have served.

These provisions must not be interpreted as restricting the humanitarian activity of the international committee of the Red Cross *(G.P.W., art. 79).*

166. Information bureaus exempt from postal charges and import and other duties.—Information bureaus shall enjoy the privilege of free postage on postal matter, as well as all exemptions provided in article 38 (see par. 111) *(G.P.W., art. 80).*

167. Reservation of right to conclude special conventions.—The high contracting parties reserve the right to conclude special conventions on all questions relative to prisoners of war which it seems to them expedient to regulate by special agreement.

Prisoners of war shall receive the benefit of these agreements until the completion of repatriation, except in the case of express stipulations to the contrary contained in the above-mentioned agreements or in later agreements, or likewise, except in the case of more favorable measures taken by

one or the other of the belligerent powers respecting the prisoners held by them.

In order to assure the application, on both sides, of the stipulations of the present convention, and to facilitate the conclusion of the special conventions provided for above, belligerents may, upon the commencement of hostilities, authorize meetings of representatives of the respective authorities charged with the administration of prisoners of war *(G.P.W., art. 83)*.

168. Text of convention to be posted.—The text of the present convention and of the special conventions contemplated in the foregoing article, shall be posted, whenever possible in the mother tongue of the prisoners of war, in places where it may be consulted by all the prisoners.

The text of these conventions shall be communicated to prisoners who find it impossible to get the information from the posted text, upon their request *(G.P.W., art. 84)*.

169. Representatives of the protecting powers allowed to see prisoners.—The high contracting parties recognize that the regular application of the present convention will find a guaranty in the possibility of collaboration of the protecting powers charged with safeguarding the interests of belligerents; in this respect, the protecting powers may, besides their diplomatic personnel, appoint delegates from among their own nationals or from among the nationals of other neutral powers. These delegates must be subject to the approval of the belligerent near which they exercise their mission.

Representatives of the protecting power or its accepted delegates shall be permitted to go to any place, without exception, where prisoners of war are interned. They shall have access to all places occupied by prisoners and may converse with them, as a general rule without witnesses, personally or through interpreters.

Belligerents shall, to the widest extent possible, facilitate the task of representatives or accepted delegates of the protecting power. The military authorities shall be informed of their visit.

Belligerents may come to an agreement to allow persons of the same nationality as the prisoners to be permitted to take part in inspection trips *(G.P.W., art. 86)*.

170. Protecting powers to aid in settling differences.—In case of disagreement between the belligerents as to the application of the provisions of the present convention, the protecting powers must, insofar as possible, lend their good offices for the purpose of settling the difference.

For this purpose, each of the protecting powers may, in particular, suggest to the interested belligerents a meeting of representatives thereof, possibly upon a neutral territory suitably chosen. Belligerents shall be bound to accede to proposals in this sense which are made to them. The protecting power may, if occasion arises, submit for the approval of the powers concerned a person belonging to a neutral power or a person delegated by the international committee of the Red Cross, who shall be summoned to take part in this meeting (*G.P.W., art. 87*).

171. International committee of the Red Cross, activities not to be affected by foregoing provisions.—The foregoing provisions are not an obstacle to the humanitarian activity which the international committee of the Red Cross may display for the protection of prisoners of war, with the consent of the interested belligerents (*G.P.W., art. 88*).

172. Annex to the Convention of July 27, 1929, relative to the treatment of prisoners of war. Model agreement concerning the direct repatriation and the hospitalization in a neutral country of prisoners of war for reasons of health. (See par. 141.)

I. Governing principles for direct repatriation and hospitalization in a neutral country.

A. Governing principles for direct repatriation.

There shall be directly repatriated:

1. Sick and wounded who, according to medical opinion, are not likely to recover in one year, their condition requiring treatment and their mental or physical fitness appearing to have suffered considerable diminution.

2. Incurable sick and wounded whose mental or physical fitness appears to have suffered considerable diminution.

3. Cured sick and wounded whose mental or physical fitness appears to have suffered considerable diminution.

B. Governing principles for hospitalization in a neutral country.

There shall be hospitalized:

1. Sick and wounded whose cure within a period of one year is to be expected, such cure appearing more certain and more rapid if the sick and wounded are given the benefit of the resources offered by the neutral country than if their captivity proper is prolonged.

2. Prisoners of war whose mental or physical health appears, according to medical opinion, to be seriously menaced by continuance in captivity, while hospitalization in a neutral country would probably remove this danger.

C. Governing principles for the repatriation of prisoners hospitalized in a neutral country.

There shall be repatriated, the prisoners of war hospitalized in a neutral country, who belong to the following categories:

1. Those whose state of health appears to be or to be becoming such that they fall within the categories of persons eligible to repatriation for reasons of health.

2. The recovered whose mental or physical fitness seems to have suffered a considerable diminution.

II. Special principles for direct repatriation or hospitalization in a neutral country.

A. Special principles for repatriation.

There shall be repatriated:

1. All prisoners of war who, as the result of organic injuries, have the following impairments, actual or functional: Loss of a member, paralysis, articular or other defects, provided that the loss is at least a foot or a hand, or is equivalent to the loss of a foot or a hand.

2. All wounded or injured prisoners of war whose condition is such that it renders them invalids whose cure, within a period of 1 year, cannot be anticipated from a medical standpoint.

3. All the sick whose condition is such that it renders them invalids whose cure, within a period of 1 year, cannot be anticipated from a medical standpoint. The following, in particular, belong to this category:

a. Progressive tuberculosis of any organs which, according to medical opinion, can no longer be cured or at least considerably improved by a course of treatment in a neutral country.

b. Nontubercular affections of the respiratory organs presumed incurable such as, above all, strongly developed pulmonary emphysema, with or without bronchitis, bronchial dilations, serious asthma, gas poisoning, etc.

c. Serious chronic affections of the organs of circulation (for example: Valvular affections with tendencies to disorders of compensation, relatively serious affections of the myocardium, pericardium and of the vessels, especially inoperable aneurisms of the large vessels, etc.).

d. Serious chronic affections of the digestive organs.

e. Serious chronic affections of the urinary and sexual organs, particularly, for example: All cases of confirmed chronic nephritis with complete semeiology, and most especially when cardiac and vascular impairments already exist; likewise pyelitis and chronic cystitis, etc.

f. Serious chronic diseases of the central and peripheral nervous system, such as particularly, serious neurasthenia and hysteria, all unquestionable cases of epilepsy, serious cases of Basedow's disease, etc.

g. Blindness in both eyes, or in one eye when the vision of the other remains below 1 in spite of the use of corrective glasses. Reduction in acuteness of vision in case it is impossible to restore it by correction to the acuteness of ½ for one eye at least. Other ocular affections coming in the present class (glaucom ., iritis, choroiditis, etc.).

h. Total deafness in both ears, as well as total deafness in one ear in case the partially deaf ear does not discern the ordinary spoken voice at a distance of one meter.

i. All unquestionable cases of mental affections.

k. All serious cases of chronic poisoning by metals or other causes (saturnism, hydragyrism, morphinism, cocainism, alcoholism, gas poisoning, etc.)

l. Chronic affections of the organs of locomotion (arthritis deformans, gout, rheumatism with impairments clinically discoverable), provided they are serious.

m. All malignant neoplasms, if they are not amenable to relatively minor operations without endangering the life of the patient.

n. All cases of malaria with noticeable organic changes (important chronic increase in size of the liver, of the spleen, cachexia, etc.).

o. Serious chronic cutaneous affections, insofar as their nature does not constitute a medical indication for hospitalization in a neutral country.

p. Serious avitaminoses (beri-beri, pellagra, chronic scurvy).

B. Special principles for hospitalization.

Prisoners of war must be hospitalized if they have the following affections:

1. All forms of tuberculosis of any organs whatever if, according to present medical knowledge, they may be cured, or at least considerably improved by methods applicable in a neutral country (altitude, treatment in sanatoria, etc.).

2. All forms, necessitating treatment, of affections of the respiratory, circulatory, digestive, genito-urinary, and nervous organs, of organs of the senses, of the locomotor and cutaneous apparatus; provided, however, that the forms of these affections do not belong to the categories requiring direct repatriation, or are not acute diseases properly so-called with a tendency to a complete cure. The affections contemplated in this paragraph are those which offer really better chances of cure for the patient by the application of means of treatment available in a neutral country than if he were treated in captivity.

Nervous troubles, the efficient or determinant causes of which are the events of the war or even of the captivity itself, such as the psychasthenia of prisoners of war and other analogous cases, should be given special consideration.

All duly verified cases of this kind should be hospitalized, provided that the seriousness or constitutional character thereof does not make them cases for direct repatriation.

Cases of psychasthenia of prisoners of war which are not cured after 3 months of hospitalization in a neutral country or which, after this period has expired, are not obviously on the road to final recovery should be repatriated.

3. All cases of wounds, of lesions, and their results which offer better chances of cure in a neutral country than in captivity, provided that these cases are not either eligible for exchange or else are insignificant.

4. All cases of malaria, duly verified and not presenting organic changes clinically discoverable (chronic increase in size of liver, of the spleen, cachexia, etc.), if the stay in a neutral country offers particularly favorable prospects of final cure.

5. All cases of poisoning (particularly by gases, metals, alkaloids) for which the prospects of cure in a neutral country are especially favorable.

There shall be excluded from hospitalization:

1. All duly verified cases of mental affections.

2. All organic or functional nervous affections reputed to be incurable. (These two categories belong to those giving a right to direct exchange.)

3. Serious chronic alcoholism.

4. All contagious affections during the period in which they are transmissible (acute infectious diseases, primary and secondary syphilis, trachoma, leprosy, etc.).

III. General observations.

The conditions given above should, generally speaking, be interpreted and applied in as broad a spirit as possible.

This breadth of interpretation should be especially applied to neuropathic or psychopathic conditions caused or brought to a head by the events of the war or even of the captivity itself (psychasthenia of prisoners of war), and also to cases of tuberculosis in all degrees.

It is needless to state that camp physicians and the mixed medical commission may find themselves confronted with a great number of cases not mentioned among the examples given under II, or cases not fitting in with these examples. The examples mentioned above are given only as typical examples; an analogous list of examples of surgical alterations has not been drawn up because, with the exception of cases incontestable by their very nature (amputations), it is difficult to make a list of particular types; experience has shown that a recital of these particular cases was not without disadvantages in practice.

All cases not fitting exactly into the examples cited shall be decided by invoking the spirit of the above governing principles.

CHAPTER 5

SICK, WOUNDED, AND DEAD

173. Prior conventions superseded.—The present convention shall replace the conventions of August 22, 1864, and of July 6, 1906, in the relations between the high contracting parties (*G.W.S., art. 34*).

174. Protected and treated with humanity.—Officers, soldiers, and other persons officially attached to armies who are wounded or sick shall be respected and protected under all circumstances; they shall be treated with humanity and cared for, without distinction of nationality, by the belligerent in whose power they are.

A belligerent, however, when compelled to leave wounded or sick in the hands of his adversary, shall leave with them, so far as military exigencies permit, a portion of the personnel and *matériel* of his sanitary service to assist in caring for them (*G.W.S., art. 1*).

175. General rules of international law in respect of war applicable; special agreements.—Subject to the care that must be taken of them under the preceding article, the wounded and sick of an army who fall into the power of the other belligerent shall be prisoners of war, and the general rules of international law in respect to prisoners shall be applicable to them.

The belligerents shall remain free, however, to agree upon such clauses to the benefit of the wounded and sick prisoners as they may deem of value over and above already existing obligations (*G.W.S., art. 2*).

176. Search for and removal; punishment of marauders.—*a. Search for wounded and dead; local armistice.*—After every engagement, the belligerent who remains in possession of the field of battle shall take measures to search for the wounded and the dead and to protect them from robbery and ill-treatment.

Whenever circumstances permit, a local armistice or cessation of fire to enable the removal of wounded left between the lines shall be arranged (*G.W.S., art. 3*).

b. Punishment of marauders.—Robbery and maltreatment of the wounded or dead on a battlefield are outrageous offenses against the laws of war. It is the duty of the commanders to see that such offenders, whether members of the armed forces or civilians, are promptly apprehended and brought to trial before competent military tribunals. Like other serious offenders against the laws of war they may be sentenced to death or such other punishment as the trial tribunal may be legally authorized to impose. (See par. 357.)

177. Mutual exchange of information.—*a. Death certificates; collection and return of personal effects; graves service.*—**Belligerents shall mutually inform each other as soon as possible of the names of the wounded, sick, and dead collected or discovered by them, as well as all indications which may serve for their identification.**

They shall draw up and forward to each other death certificates.

They shall collect and likewise send to each other all articles of personal use found on the field of battle or on the dead, especially one half of their identity tag, the other half remaining attached to the body.

They shall see that a careful examination, medical if possible, is made of the bodies of the dead prior to their interment or cremation, in order to verify their death, establish their identity, and furnish a report thereon.

They shall further see that the dead are honorably buried and that the graves are respected and may always be found again. For this purpose, and at the outbreak of hostilities, they shall officially organize a graves service in order to render any later exhumation possible and to make certain of the identity of bodies, whatever changes may be made in the location of the graves.

Upon the termination of hostilities, they shall exchange lists of graves and of dead buried in their cemeteries and elsewhere *(G. W. S., art. 4).*

b. Interpretation.—Obviously, as to each belligerent, the provisions of the foregoing article relate only to the wounded, sick, and dead of the other belligerent or belligerents engaged, because the duties of each belligerent concerning its own wounded, sick, and dead are fixed by its own laws and regulations.

178. Appeal to inhabitants to care for sick and wounded permitted.—Military authorities may appeal to the charitable zeal of the inhabitants to receive and, under the supervision of the former, to care for the wounded or sick of the armies, granting to persons responding to such appeal special protection and certain facilities *(G. W. S., art. 5)*.

SANITARY FORMATIONS AND ESTABLISHMENTS

179. Mobile sanitary formations and fixed establishments of sanitary service to be respected and protected.—Mobile sanitary formations, i. e., those which are intended to accompany armies in the field, and the fixed establishments belonging to the sanitary service shall be respected and protected by the belligerents *(G. W. S., art. 6)*.

180. When protection ceases.—The protection due to sanitary formations and establishments shall cease if they are used to commit acts injurious to the enemy *(G. W. S., art. 7)*.

181. Forfeiture of protection.—*a. Acts permitted.*—A sanitary formation or establishment shall not be deprived of the protection accorded by article 6 (see par. 179) by the fact—

1. That the personnel of a formation or establishment is armed and uses its arms in self-defense or in defense of its wounded and sick.

2. That in the absence of armed hospital attendants the formation is guarded by an armed detachment or by sentinels.

3. That hand arms and munitions taken from the wounded and sick and not yet turned over to the proper service are found in the formation or establishment.

4. That there is found in the formation or establishment personnel or *matériel* of the veterinary service which does not integrally belong to it *(G. W. S., art. 8)*.

b. Self-defense defined.—Although the sanitary personnel may carry arms for self-defense, they shall not employ such arms against the legitimate enemy forces. These arms are for their personal defense and for protection of the wounded and sick under their charge against marauders and the like.

c. Guards for sanitary units protected.—Soldiers from other branches employed as orderlies or guards for sanitary units are treated as sanitary personnel if they carry written orders of

competent authority showing such status and have not during such status acted as combatants.

d. Arms and ammunition taken from the wounded and sick.—As provided in substance by the foregoing article, the presence of such arms and ammunition in a sanitary formation or establishment does not of itself alone forfeit the protection to be accorded sanitary units under this convention. However, such arms and ammunition should be turned in as soon as practicable, and, in any event, are subject to confiscation.

PERSONNEL OF SANITARY FORMATIONS AND ESTABLISHMENTS

182. Respect and protection.—*a. Privileges of personnel.*—**The personnel charged exclnsively with the removal, transportation, and treatment of the wounded and sick, as well as with the administration of sanitary formations and establishments, and the chaplains attached to armies, shall be respected and protected under all circumstances. If they fall into the hands of the enemy they shall not be treated as prisoners of war.**

Military personnel which has received special instructions to be used when necessary as auxiliary attendants or litter bearers in the removal, transportation, and treatment of the wounded and sick, and bearing identification documents, shall benefit by the same regime as the permanent sanitary personnel if captured while performing these functions (G.W.S., *art. 9*).

b. What is meant by respect and protection.—The respect and protection accorded personnel of certain categories by articles 6 (par. 179) and 9 (*a* above) mean that they must not knowingly be attacked, fired upon, or unnecessarily prevented from discharging their proper functions. The accidental killing or wounding of such personnel, due to their presence among or proximity to combatant elements actually engaged, by fire directed at the latter, affords no just cause for complaint.

183. Personnel of voluntary societies; names of those authorized to be exchanged.—The personnel of volunteer aid societies duly recognized and authorized by their government, who may be employed in the same functions as the personnel contemplated in article 9, paragraph 1 (see par. 182*a*), shall be

assimilated to that personnel upon condition that the personnel of the said societies shall be subject to military laws and regulations.

Each high contracting party shall notify the other, either in time of peace or at the opening or during the progress of hostilities, and in any case before actual employment, the names of the societies which it has authorized to render assistance, under its responsibility, in the official sanitary service of its armies *(G. W. S., art. 10).*

184. The American National Red Cross.—The American National Red Cross is, under the proclamation of the President, the only such volunteer society now authorized by this Government to render aid to its land and naval forces in time of war, and any other society desiring to render similar assistance can do so only through the American National Red Cross. Such portion of the society as may render aid to the land or naval forces will constitute a part of the sanitary service thereof. Their employment must be under the responsibility of the Government, and they must be assigned to duties in localities designated by competent military authority (AR 850–75).

185. Volunteer societies of neutrals.—A recognized society of a neutral country may only lend the services of its sanitary personnel and formations to a belligerent with the prior consent of its own government and the authorities of such belligerent.

The belligerent who has accepted such assistance shall be required to notify the enemy before making any use thereof *(G. W. S., art. 11).*

186. Personnel in power of enemy.—*a. Personnel not to be detained; service may be used pending return.*—The persons described in articles 9, 10, and 11 (see pars. 182a, 183, 185) may not be detained after they have fallen into the power of the enemy.

Unless there is an agreement to the contrary, they shall be sent back to the belligerent to whose service they are attached as soon as a way is open for their return and military exigencies permit.

While waiting to be returned, they shall continue in the exercise of their functions under the direction of the enemy;

they shall be assigned preferably to the care of the wounded and sick of the belligerent to whose service they are attached.

At the time of their departure they may carry with them such effects, instruments, arms, and means of transport as belong to them (*G.W.S., art. 12*).

b. Interpretations.—Nothing in the foregoing article precludes reasonable measures to prevent such personnel, upon their return to their own army, from carrying information of strategic or tactical value. Their movements and activities may be restricted as far as reasonably necessary to prevent their acquisition of such information, and if they should become possessed thereof, their return to their own army may be delayed until the information has ceased to be of substantial value.

187. Maintenance, quarters, pay, and allowances.—Belligerents shall assure to the personnel indicated in articles 9, 10, and 11 (see pars. 182, 183, 185), who are in their power, the same maintenance and quarters, pay, and allowances as to the corresponding personnel in their own armies.

At the outbreak of hostilities the belligerents shall reach an understanding on the corresponding grades of their sanitary personnel (*G.W.S., art. 13*).

BUILDINGS AND MATÉRIEL

188. Captured mobile sanitary formations to retain matériel and personnel; may be employed to care for sick and wounded.—If mobile sanitary formations, whatever may be their nature, fall into the power of the enemy, they shall retain their *matériel,* their means of transportation, and their conducting personnel.

The competent military authority, however, shall have the right to employ them in caring for the wounded and sick; their return shall take place in accordance with the conditions prescribed for the sanitary personnel and as far as possible at the same time (*G.W.S., art. 14*).

189. Fixed sanitary establishments not to be diverted from their use, exception.—Buildings and *matériel* pertaining to fixed sanitary establishments of the army shall remain subject to the laws of war, but may not be diverted from their use so long as they are necessary for the wounded and sick.

However, commanders of troops engaged in operations may use them in case of urgent military necessity, if, before such use, the wounded and sick treated there have been provided for (*G.W.S., art. 15*).

190. Buildings and *matériel* of aid societies to be regarded as private property; right of requisition.—The buildings of the aid societies admitted to the benefits of the convention shall be regarded as private property.

The *matériel* of these societies, irrespective of its location, shall likewise be regarded as private property.

The right of requisition recognized to belligerents by the laws and customs of war shall be exercised only in case of urgent necessity and after the wounded and sick have been provided for (*G.W.S., art. 16*).

SANITARY TRANSPORTATION

191. Convoys of evacuation.—Vehicles equipped for sanitary evacuation traveling singly or in convoy shall be treated as mobile sanitary formations subject to the following special provisions:

A belligerent intercepting sanitary transportation vehicles, traveling either singly or in convoy, may, if required by military necessity, stop them and break up the convoy, taking charge in all cases of the care of the wounded and sick whom it contains. He may only utilize such vehicles in the sector wherein they were intercepted and exclusively for sanitary needs. When their local mission is at an end, these vehicles must be returned under the conditions stipulated in article 14. (See par. 188.)

Military personnel charged with transportation and provided for this purpose with a regular order shall be returned under the conditions stipulated in article 12 (see par. 186) for sanitary personnel, and subject to the provisions of the last paragraph of article 18. (See par. 192.)

All means of transportation especially organized for evacuation purposes, as well as the *matériel* for organizing them, attached to the sanitary service, shall be returned in conformity with the provisions of chapter IV. (See pars. 188, 189, 190.)

Military means of transportation, other than those belonging to the sanitary service, and their teams, may be captured.

The civil personnel and all means of transportation obtained by requisition shall be subject to the general rules of international law (*G.W.S., art. 17*).

192. Aircraft used as sanitary transportation.—Aircraft used as a means of sanitary transportation shall enjoy the protection of the Convention during such time as they are exclusively reserved for the evacuation of wounded and sick and for the transportation of sanitary personnel and *matériel*.

They shall be painted in white and shall bear, conspicuously, the distinctive sign mentioned in article 19 (see par. 193) alongside of the national colors on their upper and lower surfaces.

Excepting with special and express permission, a flight over the firing line, as well as over the zone situated in front of the major medical collecting stations, and in general over any territory under the control of or occupied by the enemy shall be forbidden.

Sanitary aircraft must comply with any summons to land.

In the case of a landing thus required or made accidentally upon territory occupied by the enemy, the wounded and sick, as well as the sanitary personnel and *matériel*, including the aircraft, shall benefit by the provisions of the present Convention.

The pilot, mechanics, and wireless operators who have been captured shall be returned on condition of only being utilized in the sanitary service until the termination of hostilities (*G.W.S., art. 18*).

THE DISTINCTIVE EMBLEM

193. The Red Cross; emblem of sanitary service.—Out of respect to Switzerland the heraldic emblem of the Red Cross on a white ground, formed by the reversal of the Federal colors, is continued as the emblem and distinctive sign of the sanitary service of armies.

However, for countries which already use, as a distinctive sign, in place of the red cross, the red crescent, or the red lion and sun on a white field, these emblems shall likewise be

recognized within the meaning of the present convention (*G.W.S., art. 19*).

194. Emblem to appear on flags and matériel of sanitary service.—The emblem shall appear on flags and brassards, as well as upon all *matériel,* appertaining to the sanitary service, with the permission of the competent military authority (*G.W.S., art. 20*).

195. Brassards, protected personnel to wear; certificate of identity.—The personnel protected in virtue of the first paragraph of article 9 (see par. 182) and articles 10 and 11 (see pars. 183, 185) shall wear attached to the left arm a brassard bearing the distinctive sign, issued and stamped by a competent military authority.

The personnel indicated in article 9 (see par. 182), paragraphs 1 and 2, shall be furnished with proof of identity consisting either of an entry in their military handbook or a special document.

Persons contemplated in articles 10 and 11 (see pars. 183, 185) who do not wear military uniform shall be furnished by the competent military authority with a certificate of identity containing their photograph and attesting to their sanitary status.

Identification documents must be uniform and of the same type in each army.

The sanitary personnel may in no case be deprived of their insignia nor of their own identification papers.

In case of loss they shall have the right to obtain duplicates (*G.W.S., art. 21*).

196. The distinctive flag; where and how displayed.—The distinctive flag of the convention may only be displayed over the sanitary formations and establishments which the convention provides shall be respected, and with the consent of the military authorities. In fixed establishments it shall, and in mobile formations it may, be accompanied by the national flag of the belligerent to whose service the formation or establishment is attached.

Sanitary formations which have fallen into the power of the enemy, however, shall fly no other flag than that of the convention as long as they continue in that situation.

The belligerents, insofar as military exigencies allow, shall take such measures as may be necessary to render the distinctive emblems marking sanitary formations and establishments plainly visible to the land, air, and sea forces of the enemy, with a view to preventing the possibility of any aggressive action (*G.W.S., art. 22*).

197. Flags of sanitary formations of neutral countries.—The sanitary formations of neutral countries which, under the conditions set forth in article 11 (see par. 185), have been authorized to render their services, shall fly with the flag of the convention, the national flag of the belligerent to which they are attached.

They shall have the right during such time as they are rendering service to a belligerent to fly their own national flag also.

The provisions of the second paragraph of the preceding article are applicable to them (*G.W.S., art. 23*).

198. Red Cross emblem authorized in peace or war to designate matériel and personnel protected by the convention.—The emblem of the Red Cross on a white ground and the words *"Red Cross"* or *"Geneva Cross"* may only be used, whether in time of peace or war, to protect or designate sanitary formations and establishments, the personnel and *matériel* protected by the convention.

The same shall apply with respect to the emblems mentioned in the second paragraph of article 19 (see par. 193), for such countries as use them.

Moreover, the volunteer aid societies provided for under article 10 (see par. 183) may, in conformity with their national legislation, employ the distinctive emblem for their humanitarian activities in time of peace.

As an exceptional measure and with the specific authorization of one of the national Red Cross societies (Red Crescent, Red Lion, and Sun), the use of the emblem of the convention may be allowed in peace time to designate the location of relief stations reserved exclusively to giving free assistance to wounded or sick (*G. W. S., art. 24*).

EXECUTION OF ARTICLES OF THE CONVENTION

199. Duty of commanders in chief of belligerent armies to provide in detail for execution of the foregoing articles.—It shall be the duty of the commanders in chief of the belligerent armies to provide for the details of execution of the foregoing articles, as well as for unforeseen cases, in accordance with the instructions of their respective governments and conformably to the general principles of this convention *(G. W. S., art. 26)*.

200. Publication of provisions of Geneva convention.—The high contracting parties shall take the necessary steps to acquaint their troops, and particularly the protected personnel, with the provisions of this convention, and to make them known to the people at large *(G. W. S., art. 27)*.

INFRACTIONS

201. Investigation of violations.—At the request of a belligerent, an investigation must be held, in such manner as shall be agreed upon by the interested parties, concerning any alleged violation of the convention; whenever such a violation is proved, the belligerents shall put an end to it and repress it as promptly as possible *(G.W.S., art. 30)*.

CHAPTER 6

ESPIONAGE AND TREASON

202. Spies.—*a. General.*—A person can only be considered a spy when, acting clandestinely or on false pretenses, he obtains or endeavors to obtain information in the zone of operations of a belligerent with the intention of communicating it to the hostile party.

Thus, soldiers not wearing a disguise who have penetrated into the zone of operations of the hostile army for the purpose of obtaining information are not considered spies. Similarly, the following are not considered spies: Soldiers and civilians, carrying out their mission openly, intrusted with the delivery of dispatches intended either for their own army or for the enemy's army. To this class belong, likewise, persons sent in balloons for the purpose of carrying dispatches and,

generally, of maintaining communications between different parts of an army or a territory (*H.R., art. 29*).

b. American statutory definition.—The first paragraph of the foregoing Hague regulation has been in effect somewhat modified, as far as American practice is concerned, by the subsequently enacted eighty-second article of war (act June 4, 1920, ch. 11, art. 82; 41 Stat. 804), as follows:

Art. 82. Spies.—Any person who in time of war shall be found lurking or acting as a spy in or about any of the fortifications, posts, quarters, or encampments of any of the armies of the United States, or elsewhere, shall be tried by a general court martial or by a military commission, and shall, on conviction thereof, suffer death.

c. Eighty-second article of war governs.—Insofar as H. R. 29 and the eighty-second article of war are not in conflict with each other, they will be construed and applied together. Otherwise the Article of War governs American practice.

203. **Employment of spies lawful.**—The foregoing H. R. 29 (par. 202*a*) and H. R. 24 (par. 37) tacitly recognize the well-established right of belligerents to employ spies and other secret agents for obtaining information of the enemy. Resort to that practice involves no offense against international law. Spies are punished, not as violators of the laws of war, but to render that method of obtaining information as dangerous, difficult, and ineffective as possible for the enemy.

204. **Who included in definition.**—The definition embodied in The Hague regulation (par. 202*a*) and that contained in the eighty-second article of war (par. 202*b*) both include persons of all classes, whether military or civilian, without regard to citizenship or sex. Both likewise apply only where the acts are committed in time of war. The Hague definition applies only where the information is obtained or sought "in the zone of operations," while the statutory definition is not so limited. The latter, however, includes only persons "found lurking or acting as a spy in or about any of the fortifications, posts, quarters, or encampments of any of the armies of the United States, or elsewhere," and the phrase "or elsewhere," as here employed, has been held not to justify trial by military tribunals of "persons charged with acts or offenses committed outside of the field

of military operations or territory under martial law or other peculiarly military territory, except members of the military or naval forces or those immediately attached to the forces, such as camp followers." (Ops. Atty. Gen. U. S., vol. 31, pp. 356, 361). Persons charged with espionage committed in the United States, outside military jurisdiction, are nevertheless liable to trial and punishment by the civil courts under the espionage laws (United States Code, title 50, ch. IV).

205. **Treason.**—*a. American statutory definition.*—**Whosoever relieves or attempts to relieve the enemy with arms, ammunition, supplies, money, or other thing, or knowingly harbors or protects or holds correspondence with or gives intelligence to the enemy, either directly or indirectly, shall suffer death or such punishment as a court-martial or military commission may direct** ***(eighty-first article of war; act June 4, 1920, chap. II, 41 Stat. 804).***

b. Interpretations.—As in the case of the eighty-second article of war, relating to spies (pars. 202*b*, 204), it is believed that this statute, when subject to judicial interpretation, will be held to authorize the trial of civilians by military tribunals, only when the offense has been committed within territory under martial law or military government, or within the zone of military operations, or within a military reservation, post, or camp, or in a place otherwise especially subject to military jurisdiction. Cases occurring in the United States outside military jurisdiction are triable by the civil courts under the espionage laws above mentioned (par. 204). In time of war, within territory under military control for any of the reasons above indicated, the rule is general in its application to persons of all classes, without regard to citizenship or military or civil status.

c. Extraterritorial force of the rule.—Although the eighty-first article of war, as an enactment of the Congress, technically applies of its own force only within territory of the United States and to persons subject to American military law elsewhere, it substantially embodies principles of the unwritten laws of war applicable to occupied enemy territory, and will be enforced by American troops occupying such territory.

206. **War traitors.**—Violators of the foregoing rule are called "war traitors."

207. Subject giving information to own government.—If the citizen or subject of a country or place invaded or conquered gives information to his own government, from which he is separated by the hostile army, or to the army of his government, he is a war traitor.

208. Guide to the enemy.—If a citizen of a hostile and invaded district voluntarily serves as a guide to the enemy, or offers to do so, he is deemed a war traitor.

209. Punishment of spies.—The spy is punishable with death whether or not he succeeds in obtaining the information or in conveying it to the enemy.

210. Punishment for treason.—The war traitor is always severely punished. If his offense consists in betraying to the enemy anything concerning the condition, safety, operations, or plans of the troops holding or occupying the place or district, his punishment is death.

211. Spy must be tried.—A spy taken in the act shall not be punished without previous trial *(H. R., art. 30).*

212. Spy immune from punishment after joining his own army.—A spy who, after rejoining the army to which he belongs, is subsequently captured by the enemy, is treated as a prisoner of war, and incurs no responsibility for his previous acts of espionage *(H. R., art. 31).*

213. Immunity not applicable to treason.—This immunity does not extend to persons guilty of treason who may be arrested at any place or any time within the jurisdiction; and it is not necessary for traitors to be caught in the act in order that they may be punished.

214. Assisting espionage punishable.—Assisting or favoring espionage or treason and knowingly concealing a spy may be made the subject of charges; and such acts are by the customary laws of war equally punishable.

CHAPTER 7

INTERCOURSE BETWEEN BELLIGERENTS

215. Nonintercourse, the rule.—All intercourse between the territories occupied by belligerent armies, whether by traffic, by letter, by travel, or in any other way, ceases. This is the general rule to be observed without special proclamation.

216. Exceptions to rule.—Exceptions to this rule, whether by safe-conduct, or permission to trade on a small or large scale, or by exchanging mails, or by travel from one territory into the other, can take place only according to agreement approved by the government or by the highest military authority. Contraventions of this rule are highly punishable.

217. Good faith essential.—It is absolutely essential in all nonhostile relations that the most scrupulous good faith shall be observed by both parties, and that no advantage not intended to be given by the adversary shall be taken.

218. Ambassadors and diplomatic agents.—Ambassadors and other diplomatic agents of neutral powers, accredited to the enemy, may receive safe-conducts through the territories occupied by the belligerents, unless there are military reasons to the contrary, and unless they may reach the place of their destination conveniently by another route. It implies no international affront if the safe-conduct is declined. Such passes are usually given by the supreme authority of the State and not by the subordinates.

219. Rules, where found.—These nonhostile relations are usually comprised under the headings of parlementaires, flags of truce, armistices, capitulations, passports, safe-conducts, safeguards, and cartels.

220. Definition of parlementaires.—Parlementaires are agents employed by commanders of belligerent forces in the field, to go in person within the enemy lines, for the purpose of communicating or negotiating openly and directly with the enemy commander.

221. Inviolability of parlementaire.—A person is regarded as a parlementaire who has been authorized by one of the belligerents to enter into communication with the other, and who advances bearing a white flag. He has a right to inviolability, as well as the trumpeter, bugler or drummer, the flag bearer, and interpreter who may accompany him (*H.R., art. 32*).

222. Instruction of soldiers concerning parlementaire.—All soldiers, of whatever grade, should be thoroughly acquainted with the qualifications and privileges accorded parlementaires, and with the proper method of receiving them when they present themselves.

223. Signification of white flag.—The white flag, when used by troops, indicates a desire to communicate with the enemy. The hoisting of a white flag has no other signification in international law. It may indicate that the party hoisting it desires to open communication with a view to an armistice or a surrender. If hoisted in action by an individual soldier or a small party, it may signify merely the surrender of that soldier or party. It is essential, therefore, to determine with reasonable certainty that the flag is shown by actual authority of the enemy commander before basing important action upon that assumption.

224. Fire during display of white flag.—The enemy is not required to cease firing when a white flag is raised. To indicate that the hoisting is authorized by its commander, the appearance of the flag should be accompanied or followed promptly by a complete cessation of fire from that side. The commander authorizing the hoisting of the flag should also promptly send a parlementaire.

225. Fire not to be directed on the parlementaire.—The fire should not be intentionally directed on the person carrying the flag or upon those with him; if, however, the parlementaire or those near him present themselves during an engagement and are killed or wounded, it furnishes no ground for complaint. It is the duty of the parlementaire to select a propitious moment for displaying his flag, such as during the intervals of active operations, and to avoid the dangerous zone by making a detour.

226. Credentials of parlementaire.—The parlementaire, in addition to presenting himself under cover of a white flag, must be duly authorized in a written instrument signed by the commander of the forces.

227. No communication at night.—No provision is made for opening communication with an enemy during the hours of darkness when a white flag cannot be seen. An attempt to send a parlementaire at night is very dangerous, and at best uncertain.

228. Reception of parlementaire.—The commander to whom a parlementaire is sent is not obliged to receive him under all circumstances. He may take all the necessary steps to prevent the parlementaire from taking advantage of his mission to

obtain information. In case of abuse, he has the right to detain the envoy temporarily (*H.R., art. 33*).

229. May prescribe formalities.—The commander may declare the formalities and conditions upon which he will receive a parlementaire and fix the hour and place at which he must appear. The present rule is that a belligerent may not declare beforchand, even for a specified period—except in case of reprisal for abuses of the flag of truce—that he will not receive parlementaires. An unnecessary repetition of visits need not be allowed.

230. Who may accompany the parlementaire.—Only three persons are authorized to accompany the parlementaire. These, under the rule, are entitled to the same immunity. In case he is to have more than these, authority for the same should be previously obtained. He may be accompanied by a less number, and may even go alone with the flag of truce. It is advisable to have at least a trumpeter, bugler, or drummer with him in order more readily and surely to make known his status, thereby avoiding danger as much as possible.

231. Formalities in the reception of parlementaires.—*a.* The parlementaire, with necessary authorization and with his duly authorized attendants, should approach the enemy's outpost or lines at a slow pace. When he arrives near enough to be recognized—that is, seen and heard—he causes his trumpet or bugle to be sounded or drum to be beaten and his flag to be waved.

b. He then advances at a slow pace toward the line, carefully obeying all instructions signaled or given him by any party of the enemy sent out to meet or conduct him.

c. He will then proceed to the point and by the route designated for receiving him. He may be furnished an escort for this by the enemy.

d. On arriving at the post of admittance the bearer and his escort dismount, and, leaving the escort at a convenient distance in rear, he proceeds on foot to the commander or senior officer of the post and states his mission.

e. The escort should not attempt to enter the lines with the parlementaire, and must obey all instructions or signals given them.

f. Marked courtesy must be observed on both sides. Conversation should be prudent and not touch upon the military opera-

tions. Great care will be exercised not to ask for nor to impart information.

g. The parlementaire will be treated with all the honors due to his rank and station and furnished an escort or guard in case of necessity.

h. A parlementaire cannot of strict right claim to pass the outpost, nor can he demand to be conducted into the presence of the commanding officer. His message, if written, may be transmitted to the commanding officer; if verbal, he may be required to reduce it to writing or deliver it orally to such person as may be designated to receive it. If he is sent to the rear for any reason whatever, he should be blindfolded and sent by a circuitous route.

i. In cases where resort is had to a decision from higher authority, the parlementaire must wait until same is returned.

j. The parlementaire will be permitted to retire and return with the same formalities and precautions as upon arrival.

232. Detention of parlementaire.—In addition to right of detention for abuse of his position, a parlementaire may be detained in case he has seen anything or obtained knowledge which may be detrimental to the enemy, or if his departure should reveal information of the movement of troops. He should be detained only so long as circumstances imperatively demand, and information should be sent at once to his commander as to such detention, as well as of any other action taken against him or against his party.

233. Inviolability, loss of.—The parlementaire loses his right of inviolability if it is proved in a clear and incontestable manner that he has taken advantage of his privileged position to provoke or commit an act of treachery (*H.R., art. 34*).

234. Abuse of flag of truce.—It constitutes an abuse of the flag of truce, forbidden as an improper use under H.R., article 23 (f) (see par. 41), for an enemy not to halt and cease firing while the parlementaire sent by him is advancing and being received by the other party; likewise, if the flag of truce is made use of for the purpose of inducing the enemy to believe that a parlementaire is going to be sent when no such intention exists. It is also an abuse of a flag of truce to carry out operations under the protection accorded by the enemy to it

and those accompanying it. An abuse of a flag of truce may authorize a resort to reprisals. (See par. 358.)

CHAPTER 8

MILITARY PASSPORTS, SAFE-CONDUCTS, SAFEGUARDS, AND CARTELS

235. Military passport.—A military passport is a document issued by order of a commander of belligerent forces, authorizing a person or persons named therein, *residing or sojourning within territory occupied by such forces*, to travel unmolested within such territory, with or without permission to pass, or to pass and return, by designated routes, through the lines, subject to such further conditions and limitations as the commander may prescribe.

236. Safe-conduct for persons.—Documents like passports, issued by the same authority and for similar purposes, *to persons residing or sojourning outside of the occupied areas*, who desire to enter and remain within or pass through such areas, are called safe-conducts.

237. Safe-conduct for goods.—Similar documents, issued by the same authority, to persons residing within or without the occupied areas, to permit them to carry specified goods to or from designated places within those areas, and to engage in trade otherwise forbidden by the general rule of nonintercourse, are also called safe-conducts. (See also par. 240.)

238. Passports and safe-conducts; use of terms; forms; transferability.—The difference between military passports and safe-conducts as to persons has not heretofore been clearly defined, the two terms having been employed more or less indiscriminately. The distinctions above indicated are based upon analogous customs with relation to civil passports and are adopted in the present text to avoid further confusion in this respect. Printed forms for these documents will be supplied in time of war by The Adjutant General. Passports and safe-conducts as to persons are individual and nontransferable. A safe-conduct for goods, although restricted to the articles therein designated, may be carried by any agent of the person or firm to which it is issued, who is designated by that person

or firm by written indorsement upon the document to accompany the goods, unless the person to accompany the goods is named in the document. In the latter event the document will be honored only in the hands of the person so named. When passports and safe-conducts are granted by arrangement with the enemy, or with a neutral power, they must be issued and honored precisely according to the terms of the arrangement.

239. **Passports and safe-conducts; revocation and lapse.**—Any passport or safe-conduct may be revoked by the commander issuing it, or by his superiors, for reasons of military expediency, but, until revoked, it is binding upon the grantor and his successors. When a time is specified in the document, it is valid only during such time. These documents should not be revoked for the purpose of securing the persons of the holders, who should be given time to withdraw in safety. In case of violation of their terms the privilege will be withdrawn and the case investigated.

240. **Licenses to trade.**—Safe-conducts for goods in which the grantee is given a continuing right for a prescribed period, or until further orders, to engage in the specified trade, are sometimes called licenses to trade.

241. **Safeguard.**—A safeguard is a detachment of soldiers posted or detailed by a commander of troops for the purpose of protecting some person or persons, or a particular village, building, or other property. The term "safeguard" is also used to designate a written order by a commander of belligerent forces for the protection of an enemy subject or enemy property. It is usually directed to the succeeding commander requesting the grant of protection for such individuals or property. Written safeguards may be delivered to the parties whose persons or property are to be protected, or they may be posted on the property. The violation of a safeguard is a grave offense against the laws of war. (See A. W. 78.)

242. **Inviolability of soldiers as safeguards.**—Soldiers on duty as safeguards are guaranteed against the application of the laws of war, and it is customary to send them back to their army when the locality is occupied by the enemy, together with their baggage and arms, as soon as military exigencies permit.

243. Cartels.—In the customary military sense a cartel is an agreement entered into by belligerents for the exchange of

prisoners of war. In its broader sense it is a convention concluded between belligerents for the purpose of arranging or regulating certain kinds of nonhostile intercourse otherwise prohibited by reason of the existence of the war. Both parties to a cartel are in honor bound to observe its provisions with the most scrupulous care, but it is voidable by either party upon definite proof that it has been intentionally violated in an important particular by the other party.

CHAPTER 9

CAPITULATIONS AND ARMISTICES

CAPITULATIONS

244. Definition.—A capitulation is an agreement entered into between commanders of belligerent forces for the surrender of a body of troops, a fortress, or other defended locality, or of a district of the theater of operations.

245. Military honor in.—Capitulations agreed upon between the contracting parties must take into account the rules of military honor.

Once settled, they must be scrupulously observed by both parties (*H.R., art. 35*).

246. Powers of commanders.—Subject to the limitations hereinafter indicated, the commander of a fort or place, or the commander in chief of an army, is presumed to be duly authorized to enter into capitulations. If he capitulates unnecessarily and shamefully, or in violation of orders from higher authority, he is liable to trial and punishment by his own government (see A.W. 75), but the validity of the capitulation remains unimpaired. His powers are not presumed to extend beyond the forces and territory under his own command. He is not presumed to possess power to bind his government to a permanent cession of the place or places under his command, or to any surrender of sovereignty over territory, or to any cessation of hostilities in a district beyond his command, or generally to make or agree to terms of a political nature, or such as will take effect after the termination of hostilities.

247. Forms of capitulations.—There is no specified form for capitulations. They may be concluded either orally or in writ-

ing, but in order to avoid disputes which may arise as to the terms thereof, it is best, whenever possible, that they be reduced to writing. The convention should contain in precise terms every condition to be observed on either side, excepting such conditions as are clearly imposed by the laws of war. Details of time and procedure should be prescribed in the most exact and unequivocal language. Even in case of an unconditional surrender following an assault, when the terms are practically dictated by the victor, they should nevertheless be embodied in a written capitulation as soon as practicable.

248. Subjects usually regulated.—In the terms of capitulation the following subjects are usually determined:

a. Cessation of hostilities.—If hostilities have not already been suspended, the date, hour, and minute when they are to cease should be specified.

b. The fate of the garrison, including those persons who may have assisted them.—It is usually agreed that these are to become prisoners of war. In that event, if both belligerents are parties to the Geneva convention of 1929 (ch. 4), concerning the treatment of prisoners of war, little or nothing more on that subject need be included in the capitulation. However, special circumstances, such as the bravery of the defense, the strategic or tactical importance of immediate occupation of the place or area to be surrendered, the probable losses that would be involved in forcing an unconditional surrender, inability of the victor to guard, evacuate, and maintain so many as prisoners of war, or other considerations, may justify the victorious commander in agreeing to allow the defeated force simply to evacuate, or to march out with the "honors of war," or to disperse after disarming and giving paroles, providing in the latter case the laws of their country do not forbid, and they are willing to give paroles.

c. The disarming of the place and of the defenders.—The officers are sometimes allowed to retain their side arms besides the articles which they are entitled to keep under (*G. P. W., art. 6*), paragraph 79.

d. The turning over of the arms and matériel, and, in a proper case, the locating of the mine defenses, etc.

e. The evacuation of and taking possession of the surrendered place.—The provisions relative to the withdrawal of the de-

fenders and the entering into possession of the besiegers are fixed in advance with absolute precision, according to the circumstances of each case. Commissions may be named for the delivery and taking possession, respectively.

f. Provisions relative to the medical personnel, sick, and wounded.

g. Provisions for taking over the civil government and property of the place, with regard to the peaceable population.

h. Stipulations with regard to the immediate handing over to the victor of certain forts or places, or other similar provisions, as a pledge for the fulfillment of the capitulation.

249. Damage or destruction of property prohibited after capitulation.—From the moment of the signing of a capitulation, the capitulator has no right to demolish, destroy, or injure the works, arms, stores, or ammunition in his possession during the time which elapses between the signing and the execution of the capitulation, unless otherwise stipulated in same.

250. Denunciation of capitulation.—A capitulation can be denounced and hostilities immediately resumed for failure to execute any clause which has been agreed upon or in case it was obtained through a breach of faith.

ARMISTICES

251. Definition.—An armistice is the cessation of active hostilities for a period agreed on between belligerents. It should, if possible, be agreed upon in writing and duly ratified by the highest authorities of the contending parties.

252. Effect of armistice.—An armistice suspends military operations by mutual agreement between the belligerent parties. If its duration is not defined, the belligerent parties may resume operations at any time, provided always that the enemy is warned within the time agreed upon, in accordance with the terms of the armistice (*H.R., art. 36*).

253. Nature of armistice.—An armistice is not a partial or a temporary peace; it is only the suspension of military operations to the extent agreed upon by the parties.

254. When binding.—An armistice is binding upon the belligerents from the time of the agreed commencement, but the

officers of the armies are responsible only from the time when they receive official information of its existence.

255. Importance of fixing time.—In all armistices it is of the utmost importance that the exact moment for the commencement and for the termination of same shall be fixed in the terms thereof beyond any possibility of mistake or misconception.

256. Activities authorized during an armistice.—An armistice need not in terms prohibit actual hostilities. Anything else may be done during an armistice that is not in express terms prohibited by the agreement.

257. Form of armistice.—No special form for an armistice is prescribed. It should, if possible, be reduced to writing, in order to avoid misunderstandings and for purposes of reference should differences of opinion arise. It should be drafted with the greatest precision and with absolute clearness.

258. Kinds of armistice.—An armistice may be general or local. The first suspends the military operations of the belligerent States everywhere; the second only between certain fractions of the belligerent armies and within a fixed radius (*H.R., art. 37*).

259. General armistices.—General armistices are of a combined political and military character. They usually precede the negotiations for peace, but may be concluded for other purposes. Due to its political importance, a general armistice is concluded by the governments concerned or by their commanders in chief, and is subject to ratification by the governments in every case. General armistices are frequently arranged by diplomatic representatives.

260. Local armistice.—A local armistice suspends operations between certain portions of the belligerent forces, or within a designated district of the theater of operations. A local armistice may be concluded by the military forces only, or by the naval forces only, or between a less number than all of the belligerents at war.

261. Suspension of arms.—A suspension of arms is a form of armistice concluded between commanders of armies, or even of detachments, for some local military purpose; such as to bury the dead, to collect the wounded, to arrange for exchange

of prisoners, to enable a commander to communicate with his government or superior officer.

262. Notification of armistice.—An armistice must be notified officially and in good time to the competent authorities and to the troops. Hostilities are suspended immediately after the notification, or at the time fixed (*H.R., art. 38*).

263. Intercourse in theater of operations.—It rests with the contracting parties to settle, in the terms of the armistice, what intercourse may be held in the theater of war with and between the populations (*H.R., art. 39*).

264. Rule in absence of stipulation.—If nothing is stipulated, the intercourse remains suspended, as during actual hostilities.

265. What stipulations an armistice should contain.—Stipulations covering the following matters should be incorporated in an armistice:

a. Precise date, day, and hour of the commencement of the armistice.—These may be different in different parts of the army.

b. Duration of the armistice.—The duration may be for a definite or indefinite period. In case it is indefinite, a belligerent may resume operations at any time after due notice given. If a term is fixed and no agreement has been made for prolonging it, hostilities may be resumed without notice at the expiration of the term in the absence of positive agreement to the contrary. An armistice commences, in the absence of express mention to the contrary, at the moment it is signed.

c. Principal lines and all other marks or signs necessary to determine the locations of the belligerent troops.—For this purpose maps with the lines indicated thereon may be attached to and made part of the convention. Provision may be included for a neutral zone between the two armies. It is usually agreed that these lines are not to be crossed or the neutral zone entered except by parlementaires or other parties by special agreement for specified purposes, such as to bury the dead and collect the wounded.

d. Relation of the armies with the people.—If it is desired to make any change during the armistice in the relations between the opposing forces and the peaceable inhabitants, this must be

accomplished by express provision. Otherwise these relations remain unchanged, each belligerent continuing to exercise the same rights as before, including the right to prevent or control all intercourse between the inhabitants within his lines and persons within the enemy lines.

e. Acts to be prohibited during the armistice.—In the absence of stipulations to the contrary, each belligerent is authorized to make movements of troops within his own lines, to receive and instruct recruits, to construct intrenchments, to repair bridges, to establish new batteries, and, in general, to take advantage of the time and means at his disposal to prepare for resuming hostilities. This includes the right to continue espionage, but does not include the right to introduce supplies into a besieged fortress unless specially stipulated in the agreement.

266. Denunciation of armistice.—Any serious violation of the armistice by one of the parties gives the other party the right of denouncing it, and even, in cases of urgency, of recommencing hostilities immediately (*H.R., art. 40*).

267. Denunciation must not involve perfidy.—An armistice, like other formal agreements between belligerents, engages the honor of both parties for the exact and complete fulfillment of every obligation thereby imposed. It would be an outrageous act of perfidy for either party, without warning, to resume hostilities during the period of an armistice, with or without a formal denunciation thereof, except in case of urgency and upon convincing proof of intentional and serious violation of its terms by the other party. Nevertheless, under the article last above quoted, upon definite proof of such a violation of the armistice, if the delay incident to formal denunciation and warning seems likely to give the violator a substantial advantage of any kind, the other party is free to resume hostilities without warning and with or without a formal denunciation.

268. Armistice no excuse for lack of vigilance.—The existence of an armistice does not warrant relaxation of vigilance in the service of security and protection, or in the preparedness of troops for action, or exposing positions to the enemy.

269. Violations by individuals.—A violation of the terms of the armistice by private individuals acting on their own initiative only entitles the injured party to demand punishment of

the offenders or, if necessary, compensation for the losses sustained (*H.R., art. 41*).

"Private individuals," as employed in the foregoing article, is understood to mean persons within the enemy lines other than members of the armed forces.

270. Soldiers captured while violating armistice.—Enemy soldiers captured in the act of breaking an armistice are treated by the captor as prisoners of war. If acting upon their own initiative alone, they may be tried and punished for the offense, but not otherwise. Subordinate officers who, upon their own initiative, order soldiers to commit acts in violation of an armistice, if captured by the offended party, are also liable to trial and punishment. Such acts by individual soldiers or subordinate officers do not justify denunciation of the armistice unless they are proved to have been committed with the knowledge and actual or tacit consent of their own government or commander in chief, which may, however, be inferred in event of a persistent failure to punish such offenders.

CHAPTER 10

MILITARY OCCUPATION AND GOVERNMENT OF ENEMY TERRITORY

(This chapter deals primarily with the legality of military government. FM 27–5 deals with its policy and administration.)

271. Military occupation.—Territory is considered occupied when it is actually placed under the authority of the hostile army.

The occupation extends only to the territory where such authority has been established and can be exercised (*H.R., art. 42*).

272. Occupation, question of fact.—Military occupation is a question of fact. It presupposes a hostile invasion as a result of which the invader has rendered the invaded government incapable of publicly exercising its authority, and that the invader is in position to substitute and has substituted his own authority for that of the legitimate government in the territory invaded.

273. Does not transfer sovereignty.—Being an incident of war, military occupation confers upon the invading force the

right to exercise control for the period of occupation. It does not transfer the sovereignty to the occupant, but simply the authority or power to exercise some of the rights of sovereignty. The exercise of these rights results from the established power of the occupant and from the necessity for maintaining law and order, indispensable to both the inhabitants and to the occupying force.

274. Distinguished from invasion.—The state of invasion corresponds with the period of resistance. Invasion is not necessarily occupation, although it precedes it and may frequently coincide with it. An invader may push rapidly through a large portion of enemy country without establishing that effective control which is essential to the status of occupation. He may send small raiding parties or flying columns, reconnoitering detachments, etc., into or through a district where they may be temporarily located and exercise control, yet when they pass on it cannot be said that such district is under his military occupation.

275. Distinguished from subjugation or conquest.—Military occupation in a foreign war, being based upon the fact of possession of *enemy* territory, necessarily implies that the sovereignty of the occupied territory is not vested in the occupying power. The occupation is essentially provisional.

On the other hand subjugation or conquest implies a transfer of sovereignty. Ordinarily, however, such transfer is effected by a treaty of peace. When sovereignty passes, military occupation, as such, must of course cease; although the territory may, and usually does for a period at least, continue to be governed through military agencies which have such powers as the President or Congress may prescribe.

276. Occupation must be effective.—It follows from the definition that military occupation must be both actual and effective; that is, the organized resistance must have been overcome and the forces in possession must have taken measures to establish law and order. It is sufficient that the occupying army can, within a reasonable time, send detachments of troops to make its authority felt within the occupied district. It is immaterial by what methods the authority is exercised, whether by fixed garrisons or flying columns, small or large forces.

277. Presence of invested fort immaterial.—The existence of a fort or defended area within the occupied district, provided such place is invested, does not render the occupation of the remainder of the district ineffective, nor is the consent of the inhabitants in any manner essential.

278. Proclamation of occupation.—In a strict legal sense no proclamation of military occupation is necessary. On account of the special relations established between the inhabitants of the occupied territory and the occupant by virtue of the presence of the invading force, the fact of military occupation, with the extent of territory affected, should be made known. The practice of this Government is to make this fact known by proclamation.

279. Commencement of occupation.—In the absence of a proclamation or similar notice the exact time of commencement of occupation may be difficult to fix. The presence of a sufficient force to disarm the inhabitants or enforce submission and the cessation of local resistance due to the defeat of the enemy's forces determine the commencement of occupation.

280. Cessation of occupation.—Occupation once acquired must be maintained. In case the occupant evacuates the district or is driven out by the enemy, or by a *levée en masse*, and the legitimate government actually resumes its functions, the occupation ceases. It does not cease, however, if the occupant, after establishing his authority, moves forward against the enemy, leaving a smaller force to administer the affairs of the district. Nor does the existence of a rebellion or the operations of guerrilla bands cause it to cease unless the legitimate government is reestablished or the occupant fails promptly to suppress such rebellion or guerrilla operations.

ADMINISTRATION OF OCCUPIED TERRITORY

281. Necessity for military government.—Military government is the organization through which a belligerent exercises authority over the territory of the enemy invaded and occupied by him. The necessity for such government arises from the failure or inability of the legitimate government to exercise its functions on account of the military operations or occupation.

282. Duty to restore law and order.—The authority of the legitimate power having in fact passed into the hands of the

occupant, the latter shall take all measures in his power to restore, and insure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country (*H.R., art. 43*).

283. **Functions of government.**—All the functions of the hostile government—legislative, executive, or administrative—whether of a general, provincial, or local character, cease under military occupation, or continue only with the sanction, or, if deemed necessary, the participation of the occupier or invader.

284. **Nature of government.**—It is immaterial whether the government established over an enemy's territory be called a military or civil government. Its character is the same and the source of its authority is the same. It is a government imposed by force, and the legality of its acts is determined by the laws of war. During the military occupation it may exercise all the powers given by the laws of war.

285. **The laws in force.**—The principal object of the occupant is to provide for the security of the invading army and to contribute to its support and efficiency and the success of its operations. In restoring public order and safety he will continue in force the ordinary civil and criminal laws of the occupied territory which do not conflict with this object. These laws will be administered by the local officials as far as practicable. All crimes not of a military nature and which do not affect the safety of the invading army are left to the jurisdiction of the local courts.

286. **Power to suspend and promulgate laws.**—The military occupant may suspend existing laws and promulgate new ones when the exigencies of the military service demand such action.

287. **Nature of laws suspended.**—The occupant will naturally alter or suspend all laws of a political nature as well as political privileges and all laws which affect the welfare and safety of his command. Of this class are those relating to recruitment in occupied territory, the right of assembly, the right to bear arms, the right of suffrage, the freedom of the press, the right to quit or travel freely in occupied territory. Such suspensions should be made known to the inhabitants.

288. **Nature of laws promulgated.**—An occupant may create new laws for the government of a country. He will promul-

gate such new laws and regulations as military necessity demands. In this class will be included those laws which come into being as a result of military rule; that is, those which establish new crimes and offenses incident to a state of war and are necessary for the control of the country and the protection of the army.

289. Prohibition as to rights and rights of action.—It is especially forbidden * * * to declare abolished, suspended, or inadmissible in a court of law the rights and rights of action of the nationals of the hostile party (*H.R., art. 23, last par.*).

290. General restrictions imposed; commercial relations.— The occupant has the unquestioned right to regulate commercial intercourse in the occupied territory; that is, he may prohibit entirely or place such restrictions and limitations upon such intercourse as he considers desirable for military purposes.

291. Censorship of press and correspondence.—The military occupant may establish censorship of the press and of telegraphic and postal correspondence. He may prohibit entirely the publication of newspapers or prescribe regulations for their publication and circulation especially in unoccupied portions of the territory and in neutral countries. He is not required to furnish facilities for postal service, but may take charge of them himself, especially if the officials of the occupied district fail to act or to obey his orders.

292. Means of transportation.—The military occupant exercises authority over all means of transportation, both public and private within the occupied district, and may seize and utilize them and regulate their operation.

293. Regulation as to taxes.—If, in the territory occupied, the occupant collects the taxes, dues, and tolls imposed for the benefit of the state, he shall do so, as far as is possible, in accordance with the rules of assessment and incidence in force, and shall in consequence be bound to defray the expenses of the administration of the occupied territory to the same extent as the legitimate government was so bound (*H.R., art. 48*).

294. When existing rules may be disregarded.—If, due to the flight or unwillingness of the local officials, it is impracticable to follow the rules of incidence and assessment in force, then the total amount of the taxes to be paid may be allotted among

the districts, towns, etc., and the local authorities be required to collect it as a capitation tax or otherwise.

295. **Surplus may be used.**—The first charge upon the State taxes is for the cost of local maintenance. The balance may be used for the purposes of the occupant.

296. **What included in taxes, tolls, etc.**—The words "for the benefit of the state" were inserted in the article to exclude local dues collected by local authorities. The occupant will supervise the expenditures of such revenue and prevent its hostile use.

EFFECTS OF OCCUPATION ON THE POPULATION

297. **Right to enforce obedience.**—The occupant can demand and enforce from the inhabitants of occupied territory such obedience as may be necessary for the security of his forces, for the maintenance of law and order, and the proper administration of the country.

298. **Oath of allegiance forbidden.**—**It is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile power (*H.R., art. 45*).**

299. **Must respect persons, religious convictions, etc.**—**Family honor and rights, the lives of persons, * * * as well as religious convictions and practice, must be respected (*H.R., art. 46*).**

300. **United States rule.**—The United States acknowledges and protects, in hostile countries occupied by them, religion and morality; the persons of inhabitants, especially those of women; and the sacredness of domestic relations. Offenses to the contrary shall be rigorously punished.

301. **Reciprocal obligations of inhabitants.**—In return for such considerate treatment, it is the duty of the inhabitants to carry on their ordinary peaceful pursuits; to behave in an absolutely peaceful manner; to take no part whatever in the hostilities carried on; to refrain from all injurious acts toward the troops or in respect to their operations; and to render strict obedience to the officials of the occupant. As to neutrals resident in occupied territory, see paragraphs 397–399.

302. **Limitation as to services of inhabitants.**—*** * * Services shall not be demanded from * * * inhabitants except for the needs of the army of occupation. They shall be * * ***

of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country.

Such * * * services shall only be demanded on the authority of the commander in the locality occupied * * * (*H.R., art. 52*).

303. General right to requisition services.—Services of the inhabitants of occupied territory may be requisitioned for the needs of the army. These will include the services of professional men, and tradesmen, such as surgeons, carpenters, butchers, bakers, etc.; employees of gas, electric light, and water works, and other public utilities; and of sanitary boards in connection with their ordinary functions. The officials and employees of railways, canals, river or coastwise steamship companies, telegraph, telephone, postal, and similar services, and drivers of transport, whether employed by the State or private companies, may be requisitioned to perform their professional duties so long as the duties required do not directly concern the operations of war against their own country.

304. Restoration of general conditions.—The occupant can requisition labor to restore the general condition of the public works of the country to that of peace; that is, to repair roads, bridges, railways, and as well to bury the dead and collect the wounded. In short, under the rules of obedience, they may be called upon to perform such work as may be necessary for the ordinary purposes of government, including police and sanitary work.

305. Construction of forts by inhabitants, etc.—The prohibition against forcing the inhabitants to take part in operations of war against their own country precludes requisitioning their services upon works directly promoting the ends of the war, such as construction of forts, fortifications, and entrenchments; but there is no objection to their being employed voluntarily, for pay, in this class of work, except the military reason of preventing information concerning such work from falling into the hands of the enemy.

306. Information about enemy by inhabitants.—**A belligerent is forbidden to force the inhabitants of territory occupied by it to furnish information about the army of the other belligerent, or about its means of defense (*H.R., art. 44*).**

307. Interpretation of the foregoing article.—This article was reserved by Germany, Austria, Japan, Montenegro, and Russia, because it was believed that it would contravene the pre-existing general rule and practice of the nations permitting impressment of guides.

308. Impressment of guides.—Article 44 (par. 306) is generally construed as prohibiting the impressment of guides from the inhabitants in an occupied territory. This is the construction placed upon it by the United States. In a war against any power reserving the article the impressment of guides is not prohibited.

OFFICIALS IN OCCUPIED TERRITORY

309. Oath of officials.—The occupant may require such officials as are continued in their offices to take an oath to perform their duties conscientiously and not to act to his prejudice. Every such official who declines to take such oath may be expelled; but, whether they do so or not, they owe strict obedience to the occupant.

310. Salaries of officials.—The salaries of civil officials of the hostile government who remain in the invaded territory and continue the work of their offices, especially those who can properly continue it under the circumstances arising out of the war—such as judges, administrative or police officers, officers of city or communal governments—are paid from the public revenues of the invaded territory, until the military government has reason wholly or partially to dispense with their services. Salaries or incomes connected with purely honorary titles are always suspended.

311. Removal of civil officials.—By virtue of his powers of control the occupant is duly empowered to remove officials of every character. He will on principle remove political officials. Any official considered dangerous to the occupant may be removed, made a prisoner of war, or expelled from the occupied territory.

312. Punishment of civil officials.—Acts of civil officers that are harmful or injurious to the occupant will be dealt with under the laws of war. Other wrongs or crimes committed by them will be punished according to the law of the land.

TREATMENT OF ENEMY PROPERTY

313. Destruction and seizure of.—It is especially forbidden * * * to destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war *(H.R., art. 23, par. (g))*.

314. General rule as to war right to seize and destroy property.—The rule is that in war a belligerent may destroy or seize all property of whatever nature, public or private, hostile or neutral, unless such property is specifically protected by some definitive law of war, provided such destruction or seizure is imperatively demanded by the necessities of war.

PUBLIC PROPERTY

315. Real property of a State.—The occupying State shall be regarded as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State and situated in the occupied territory. It must safeguard the capital of these properties and administer them in accordance with the rules of usufruct *(H.R., art. 55)*.

316. Occupant's disposition of such property.—The occupant does not have the absolute right of disposal or sale of enemy real property. As administrator or usufructuary he should not exercise his rights in such wasteful and negligent manner as seriously to impair its value. He may, however, lease or utilize public lands or buildings, sell the crops, cut and sell timber, and work the mines. A lease or contract should not extend beyond the conclusion of the war.

317. State real property susceptible of direct military use.—Real property of a State which is of direct military use, such as forts, arsenals, dockyards, magazines, barracks, railways, canals, bridges, piers, and wharves, remains in the hands of the occupant until the close of the war, and may be destroyed or damaged, if deemed necessary, in military operations.

318. Property of municipalities, etc.—The property of municipalities, that of institutions dedicated to religion, charity, and education, the arts and sciences, even when State property, shall be treated as private property.

All seizures of, destruction, or willful damage done to institutions of this character, historic monuments, works of art, science, is forbidden and should be made the subject of legal proceedings *(H.R., art. 56).*

319. **Authorized treatment.**—The property included in the foregoing rule may be utilized in case of necessity for quartering the troops, the sick and wounded, horses, stores, etc., and generally as prescribed for private property. Such property must, however, be secured against all avoidable injury, even when located in fortified places which are subject to seizure or bombardment.

320. **Movable property.**—**An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for military operations *(H.R., art. 53, par. 1).***

321. **Two classes of movable property.**—All movable property belonging to the State directly susceptible of military use may be taken possession of as booty and utilized for the benefit of the invader's government. Other movable property, not directly susceptible of military use, must be respected and cannot be appropriated.

322. **Property of unknown ownership treated as public property.**—Where the ownership of property is unknown—that is, where there is any doubt as to whether it is public or private, as frequently happens—it should be treated as public property until ownership is definitely settled.

PRIVATE PROPERTY

323. **Must be respected—Private property * * * must be respected *(H.R., art. 46, par. 1).***

324. **Devastation.**—The measure of permissible devastation is found in the strict necessities of war. As an end in itself, as a separate measure of war, devastation is not sanctioned by the law of war. There must be some reasonably close connection between the destruction of property and the overcoming of the enemy's army. Thus the rule requiring respect for private property is not violated through damage resulting from operations, movements, or combats of the army; that is, real

estate may be utilized for marches, camp sites, construction of trenches, etc. Buildings may be used for shelter for troops, the sick and wounded, for animals, for reconnaissance, cover defense, etc. Fences, woods, crops, buildings, etc., may be demolished, cut down, and removed to clear a field of fire, to construct bridges, to furnish fuel if imperatively needed for the army.

325. **American rule.**—This rule (respect for private property, etc.) does not interfere with the right of the victorious invader to tax the people or their property, to levy forced loans, to billet soldiers, or to appropriate property, especially houses, boats or ships, and lands, for temporary and military use.

326. **Confiscation.—Private property cannot be confiscated** ***(H.R., art. 46, par. 2).***

327. **Booty.**—All captures and booty belong, according to the modern law of war, primarily to the government of the captor.

Prize money whether on land or sea can now be claimed only under local law.

328. **Private gain by officers and soldiers prohibited.**—Neither officers nor soldiers are allowed to make use of their position or power in the hostile country for private gain, not even for commercial transactions otherwise legitimate.

329. **Pillage.—Pillage is formally forbidden** ***(H.R., art. 47).***

330. **Seizure and devastation of private property.**—Private property can be seized only by way of military necessity for the support or other benefit of the army or of the occupant. All destruction of property not commanded by the authorized officer, all pillage or sacking, even after taking a town or place by assault, are prohibited under the penalty of death or such other severe punishment as may seem adequate to the gravity of the offense.

331. **Private property susceptible of direct military use.—All appliances, whether on land, at sea, or in the air, adapted for the transmission of news, or for the transport of persons or things, exclusive of cases governed by naval law, depots of arms, and, generally, all kinds of ammunition of war, may be seized, even if they belong to private individuals, but must be restored and compensation fixed when peace is declared** ***(H.R., art. 53, par. 2).***

332. What included in rule.—The foregoing rule includes everything susceptible of direct military use, such as cables, telephone and telegraph plants, horses and other draft and riding animals, motors, bicycles, motorcycles, carts, wagons, carriages, railways, railway plants, tramways, ships in port, all manner of craft in canals and rivers, balloons, airships, airplanes, depots of arms, whether military or sporting, and in general all kinds of war material.

333. Destruction of such property.—The destruction of the foregoing property and all damage to the same is justifiable if it is required by the exigencies of the war.

334. Submarine cables.—Submarine cables connecting an occupied territory with a neutral territory shall not be seized or destroyed except in the case of absolute necessity. They must likewise be restored and compensation fixed when peace is made *(H.R., art. 54)*.

REQUISITIONS

335. Requisitions.—Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country.

Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied.

Contributions in kind shall as far as possible be paid for in cash; if not, a receipt shall be given and the payment of the amount due shall be made as soon as possible *(H.R., art. 52)*.

336. What may be requisitioned.—Practically everything may be requisitioned under this article that is necessary for the maintenance of the army, such as fuel, food, forage, clothing, tobacco, printing presses, type, leather, cloth, etc. Billeting of troops for quarters and subsistence is also authorized.

337. Method of requisitioning.—Requisitions must be made under the authority of the commander in the locality. No prescribed method is fixed, but if practicable requisitions should be accomplished through the local authorities by systematic collection in bulk. They may be made direct by detachments

if local authorities fail for any reason. Billeting may be resorted to if deemed advisable.

338. **The amount taken.**—The expression "needs of the army" was adopted rather than "necessities of the war" as more favorable to the inhabitants, but the commander is not thereby limited to the absolute needs of the troops actually present. The object was to avoid reducing the population to starvation.

339. **Fixing prices.**—The prices of articles requisitioned will be fixed by agreement if possible, otherwise by military authority. The prices of commodities on sale may also be regulated and limits placed on the hours and places of trading. All authorities agree that it is good policy to pay cash if possible and to take up receipts as soon as possible.

340. **Method of enforcing.**—If cash is paid, coercion will seldom be necessary. The coercive measures adopted will be limited to the amount and kind necessary to secure the articles requisitioned.

CONTRIBUTIONS

341. Contributions.—If, in addition to the taxes mentioned in the above article (art. 48; see par. 294), **the occupant levies other money contributions in the occupied territory, this shall only be for the needs of the army or of the administration of the territory in question** ***(H.R., art. 49).***

342. Methods of levying contributions.—No contribution shall be collected except under a written order and on the responsibility of a commander in chief.

The collection of the said contribution shall only be effected as far as possible in accordance with the rules of assessment and incidence of the taxes in force.

For every contribution a receipt shall be given to the contributor ***(H.R., art. 51).***

COLLECTIVE PUNISHMENTS

343. Penalty for individual acts of inhabitants.—No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of acts of individuals for which they cannot be regarded as jointly and severally responsible ***(H.R., art. 50).***

344. Above article does not prevent reprisals.—Reprisals by the occupant for violations of the laws of war or breach of the occupant's proclamations or regulations by enemy individuals not belonging to the armed forces are not prohibited by the above article. (See par. 358.)

CHAPTER 11

PENALTIES FOR VIOLATIONS OF THE LAWS OF WAR

345. Liability of offending belligerent.—**A belligerent party which violates the provisions of the said regulations (H.R.) shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces (*H. IV, art. 3*).**

346. Remedies of injured belligerent.—In the event of clearly established violation of the laws of war, the injured party may legally resort to such remedial action as may be deemed appropriate and necessary within the following classes, to wit:

a. Publication of the facts, with a view to influencing public opinion against the offending belligerent.

b. Protest and demand for punishment of individual offenders, sent to the offending belligerent through neutral diplomatic channels, or by parlementaire direct to the commander of the offending forces.

c. Punishment of captured individual offenders.

d. Reprisals.

347. Offenses by armed forces.—The principal offenses of this class are: Making use of poisoned and otherwise forbidden arms and ammunition; killing of the wounded; refusal of quarter; treacherous request for quarter; maltreatment of dead bodies on the battlefield; ill-treatment of prisoners of war; breach of parole by prisoners of war; firing on undefended localities; abuse of the flag of truce; firing on the flag of truce; misuse of the Red Cross flag and emblem and other violations of the Geneva Convention; use of civilian clothing by troops to conceal their military character during battle; bombardment of hospitals and other privileged buildings; improper use of privileged buildings for military purposes; poisoning of wells and streams; pillage and purposeless destruction;

ill-treatment of inhabitants in occupied territory. Individuals of the armed forces will not be punished for these offenses in case they are committed under the orders or sanction of their government or commanders. The commanders ordering the commission of such acts, or under whose authority they are committed by their troops, may be punished by the belligerent into whose hands they may fall.

348. Hostilities committed by individuals not of armed forces.—Persons who take up arms and commit hostilities without having complied with the conditions prescribed by the laws of war for recognition as belligerents are, when captured by the injured party, liable to punishment as war criminals.

349. War rebels.—War rebels are persons within territory under hostile military occupation who rise in arms against the occupying forces or against the authorities established by the same. If captured they may be punished with death, whether they rise singly or in small or large bands, whether or not they have been called upon to do so by their own expelled government, and, in event of conspiracy to rebel, whether or not such conspiracy shall have matured by overt act of hostility.

350. War treason.—Examples of acts which, when committed by inhabitants of territory under hostile military occupation, are punishable by the occupying belligerent as treasonable under laws of war, are as follows: Espionage; supplying information to the enemy; damage to railways, war material, telegraphs or other means of communication; aiding prisoners of war to escape; conspiracy against the occupying forces or members thereof; intentional misleading of troops while acting as guides; voluntary assistance to the enemy by giving money or acting as guides; inducing soldiers of the occupying forces to act as spies for the enemy, to desert, or to surrender; bribing soldiers in the interest of the enemy; damage or alteration to military notices and signposts in the interest of the enemy; fouling sources of water supply and concealing animals, vehicles, supplies, and fuel in the interest of the enemy; knowingly aiding the advance or retirement of the enemy; and circulating propaganda in the interests of the enemy.

351. Unauthorized belligerents.—Men and bodies of men, who, without being lawful belligerents as defined in paragraph 9, nevertheless commit hostile acts of any kind, are not entitled to

the privileges of combatants. If captured, they have no right to be treated as prisoners of war. They may not, however, after being captured, be summarily put to death or otherwise punished, but may be brought to trial before a military commission or other tribunal, which may sentence them to death or such other punishment as it may consider proper.

352. Armed prowlers.—Armed prowlers, by whatever names they may be called, or persons of the enemy territory who steal within the lines of the hostile army for the purpose of robbing, killing, or of destroying bridges, roads, or canals, or of robbing or destroying the mail, or of cutting the telegraph wires, are not entitled to be treated as prisoners of war.

353. Marauders.—Marauders are individuals, either civilians or soldiers who have left their corps, who follow armies on the march or appear on battlefields, either singly or in bands, in quest of booty, and who rob, maltreat, or murder stragglers or wounded, or pillage the dead. Their acts are considered atrocities, and the severest punishment is imposed after trial and conviction.

354. Other crimes.—There are many other crimes or offenses incident to war, and which a belligerent may forbid and punish, such, for example, as evasion of censorship regulations; making false claims for damage; making false accusations against the troops; furnishing liquor to soldiers; being in possession of animals, stores, or supplies pertaining to the army; and, generally, neglect or disobedience of orders or regulations of a military government. All such offenses should be defined and the liability to punishment therefor made known to the inhabitants.

355. Crimes punishable by penal codes.—Crimes punishable by all penal codes, such as arson, murder, maiming, assaults, highway robbery, theft, burglary, fraud, forgery, and rape, if committed by an American soldier in a hostile country against its inhabitants, are not only punishable as at home, but a more severe punishment, if legally imposable, shall be preferred in cases in which the death penalty is not inflicted.

356. Right of trial.—No individual should be punished for an offense against the laws of war unless pursuant to a sentence imposed after trial and conviction by a military court or com-

mission or some other tribunal of competent jurisdiction designated by the belligerent.

357. War crimes subject to death penalty.—All war crimes are subject to the death penalty, although a lesser penalty may be imposed. The punishment should be deterrent, and in imposing a sentence of imprisonment it is not necessary to take into consideration the end of the war, which does not necessarily limit the imprisonment to be imposed.

358. Reprisals.—*a. Definition.*—Reprisals are acts of retaliation resorted to by one belligerent against the enemy individuals or property for illegal acts of warfare committed by the other belligerent, for the purpose of enforcing future compliance with the recognized rules of civilized warfare.

b. When and how employed.—Reprisals are never adopted merely for revenge, but only as an unavoidable last resort to induce the enemy to desist from illegitimate practices. They should never be employed by individual soldiers except by direct orders of a commander, and the latter should give such orders only after careful inquiry into the alleged offense. The highest accessible military authority should be consulted unless immediate action is demanded as a matter of military necessity, but in the latter event a subordinate commander may order appropriate reprisals upon his own initiative. Hasty or ill-considered action may subsequently be found to have been wholly unjustified, subject the responsible officer himself to punishment as for a violation of the laws of war, and seriously damage his cause. On the other hand, commanding officers must assume responsibility for retaliative measures when an unscrupulous enemy leaves no other recourse against the repetition of barbarous outrages.

c. Who may commit acts justifying reprisals.—Illegal acts of warfare justifying reprisals may be committed by a government, by its military commanders, or by a community or individuals thereof, whom it is impossible to apprehend, try, and punish.

d. Subjects of reprisals.—The offending forces or populations generally may lawfully be subjected to appropriate reprisals. Hostages taken and held for the declared purpose of insuring against unlawful acts by the enemy forces or people may be punished or put to death if the unlawful acts are nevertheless

committed. Reprisals against prisoners of war are expressly forbidden by the Geneva convention of 1929. (See par. 73.)

e. Form of reprisal.—The acts resorted to by way of reprisal need not conform to those complained of by the injured party, but should not be excessive or exceed the degree of violence committed by the enemy. Villages or houses, etc., may be burned for acts of hostility committed from them, where the guilty individuals cannot be identified, tried, and punished. Collective punishments may be inflicted either in the form of fines or otherwise.

f. Procedure.—The rule requiring careful inquiry into the real occurrence will always be followed unless the safety of the troops requires immediate drastic action and the persons who actually committed the offense cannot be ascertained.

359. Hostages.—Hostages have been taken in war for the following purposes: To insure proper treatment of wounded and sick when left behind in hostile localities; to protect the lives of prisoners who have fallen into hands of irregular troops or whose lives have been threatened; to protect lines of communication by placing them on engines of trains in occupied territory; and to insure compliance with requisitions, contributions, etc. When a hostage is accepted he is treated as a prisoner of war.

CHAPTER 12

NEUTRALITY

360. Definition.—Neutrality on the part of a state not a party to the war consists in refraining from all participation in the war, and in exercising absolute impartiality in preventing, tolerating, and regulating certain acts on its own part by its subjects and by the belligerents. It is the duty of belligerents to respect the territory and rights of the neutral states.

361. Notification of state of war and effect upon neutrals.—The existence of a state of war must be notified to the neutral power without delay, and shall not take effect with regard to them until after the receipt of a notification, which may, however, be given by telegraph. Neutral powers, nevertheless, cannot rely on the absence of notification if it is clearly established that they were in fact aware of the existence of a state of war *(H. III, art. 2).*

362. Inviolability of territory.—**The territory of neutral powers is inviolable *(H. V, art. 1).***

363. Movements of troops and convoys of supplies.—**Belligerents are forbidden to move troops or convoys of either munitions of war or supplies across the territory of a neutral power *(H. V, art. 2).***

364. Neutral can resist violations of neutrality by force.—**The fact of a neutral power resisting, even by force, attempts to violate its neutrality cannot be regarded as a hostile act *(H. V, art. 10).***

365. Patrolling the frontier.—It is quite usual, frequently necessary, and therefore the duty of a neutral power whose territory is adjacent to a theater of war to mobilize a portion of its forces to enforce its neutrality along the frontier; that is, to prevent troops of either belligerent from entering its territory, to intern such as may be permitted to enter, and generally to enforce its neutrality duties.

366. Effect of failure to prevent violation of neutrality by belligerent troops.—Should the neutral state be unable, or fail for any reason, to prevent violations of its neutrality by the troops of one belligerent entering or passing through its territory, the other belligerent may be justified in attacking the enemy forces on this territory.

367. Convoys of munitions and supplies.—A distinction must be drawn between the official acts of the belligerent state in convoying or shipping munitions and supplies through neutral territory as part of an expedition and the shipment of such supplies commercially. The former is forbidden while the latter is not.

RECRUITING

368. Forming corps of combatants and recruiting forbidden.—**Corps of combatants cannot be formed nor recruiting agencies opened on the territory of a neutral power to assist the belligerents *(H. V, art. 4).***

369. What is prohibited.—The establishment of recruiting agencies, the actual recruiting of men, the formation and organization of hostile expeditions on neutral territory, and the passage across its frontiers of organized bodies of men intending to enlist are prohibited.

370. Personnel of voluntary aid societies.—This prohibition does not extend to the medical personnel and units of a recognized voluntary aid society duly authorized to join one of the belligerents.

371. Responsibility as to individuals.—The responsibility of a neutral power is not engaged by the fact of individuals crossing the frontier spearately to offer their services to one of the belligerents *(H. V, art. 6).*

372. The test.—The prohibition in the two foregoing rules (see pars. 368 and 371) is directed against organized bodies which only require to be armed to become an immediate fighting force. Individuals crossing the frontier singly or in small bands that are unorganized create no obligation on the neutral state.

373. Nationals of belligerent not included.—Nationals of a belligerent state are permitted freely to leave neutral territory to join the armies of their country.

374. Officers on active list.—Officers of the land forces of neutral powers on the active list should not be permitted to join a belligerent, and, having joined such belligerent forces, should be recalled.

SUPPLIES

375. Neutral not bound to prevent shipment of supplies.—A neutral power is not called upon to prevent the export or transport, on behalf of one or other of the belligerents, of arms, munitions of war, or, in general, of anything which can be of use to an army or a fleet *(H. V, art. 7).*

376. Obligations of neutral state as to supplies.—A neutral state, as such, is prohibited from furnishing supplies or munitions of war and from making loans to a belligerent. It is also forbidden to permit the use of its territory for the fitting out of hostile expeditions.

377. Commercial transactions not prohibited.—Commercial transactions with belligerents by neutral companies, citizens, or persons resident in neutral territory are not prohibited; that is, a belligerent may purchase from neutral companies, citizens, or persons within neutral territory supplies, munitions of war, or anything that may be of use to an army or

fleet, which can be exported or transported without involving the neutral state.

378. Means of communication.—A neutral power is not called upon to forbid or restrict the use, on behalf of the belligerents, of telegraph or telephone cables or of wireless telegraph apparatus belonging to it or to companies or private individuals *(H. V, art. 8)*.

379. Neutral power not to assist one belligerent.—The liberty of a neutral state to transmit dispatches by means of its telegraph lines on land, its submarine cables, and wireless apparatus does not imply the power to use them or permit their use to lend a manifest assistance to one of the belligerents.

380. Impartiality.—Every measure of restriction or prohibition taken by a neutral power in regard to the matters referred to in articles 7 and 8 (see pars. 375, 378) must be impartially applied by it to both belligerents.

A neutral power must see to the same obligation being observed by companies or private individuals owning telegraph or telephone cables or wireless telegraph apparatus *(H. V, art. 9)*.

381. Use of neutral territory to establish wireless telegraphy.—Belligerents are likewise forbidden to:

(a) Erect on the territory of a neutral power a wireless telegraphy station or other apparatus for the purpose of communicating with belligerent forces on land or sea.

(b) Use any installation of this kind established by them before the war on the territory of a neutral power for purely military purposes, and which has not been opened for the service of public messages *(H. V, art. 3)*.

382. Neutral state must prohibit acts on its own territory.—A neutral power must not allow any of the acts referred to in articles 2 to 4 (see pars. 363, 368, 381) to occur on its territory.

It is not called upon to punish acts in violation of its neutrality unless the said acts have been committed on its own territory *(H. V, art. 5)*.

BELLIGERENTS INTERNED IN NEUTRAL TERRITORY

383. Internment.—A neutral power which receives on its territory troops belonging to the belligerent armies shall in-

tern them, as far as possible, at a distance from the theater of war.

It may keep them in camps and even confine them in fortresses or in places set apart for this purpose.

It shall decide whether officers can be left at liberty on giving their parole not to leave the neutral territory without permission *(H. V, art. 11)*.

384. **Duty of neutral state.**—A neutral is not bound to permit belligerent troops to enter its territory. On the other hand, it may permit them to do so without violating its neutrality, but they must be interned or confined in places designated by the neutral. They will naturally be disarmed and placed under the necessary guard, thereby occupying in many respects the same status as prisoners of war.

385. **Neutral can impose terms.**—If troops or soldiers of a belligerent are permitted to seek refuge in neutral territory, the neutral can impose the terms upon which they may do so. In case of large bodies of troops seeking refuge in neutral territory, these conditions will usually be stipulated in a convention drawn up by and between the duly authorized representative of the neutral power and the senior officer of the troops.

386. **Parole of officers.**—Beyond the right of deciding which, if any, of the officers are to be paroled, no conditions are specified and no penalties are prescribed for breach of parole given to a neutral state.

387. **Disposition of arms, equipment, etc.**—The munitions, stores, and effects which the interned troops bring with them should be restored to their government at the termination of the war.

388. **Maintenance.**—In the absence of a special convention to the contrary, the neutral power shall supply the interned with the food, clothing, and relief required by humanity.

At the conclusion of peace the expenses caused by the internment shall be made good *(H. V, art. 12)*.

389. **Prisoners of war.**—A neutral power which receives escaped prisoners of war shall leave them at liberty. If it allows them to remain in its territory it may assign them a place of residence.

The same rule applies to prisoners of war brought by troops taking refuge in the territory of a neutral power *(H. V, art. 13).*

390. Sick and wounded.—**A neutral power may authorize the passage into its territory of the sick and wounded belonging to the belligerent armies, on condition that the trains bringing them shall carry neither personnel or war material. In such a case, the neutral power is bound to take whatever measures of safety and control are necessary for the purpose.**

The sick or wounded brought under these conditions into neutral territory by one of the belligerents, and belonging to the hostile party, must be guarded by the neutral power so as to insure their not taking part again in the military operations. The same duty shall devolve on the neutral state with regard to wounded or sick of the other army who may be committed to its care *(H. V, art. 14).*

Direct repatriation for reasons of health of prisoners of war, hospitalized in a neutral country, is provided for in the annex to the Geneva convention of July 27, 1929 (model agreement). (See pars. 141, 172.)

391. Obligations of neutral state.—The neutral power is under no obligation to permit the passage of a convoy of evacuation of sick and wounded through its territory, but when permitted to pass, the neutral must exercise control; must see that neither personnel nor *matériel* other than that necessary for the care of the sick and wounded is carried, and generally must accord impartiality of treatment to the belligerents.

392. Consent of other belligerent.—There is no indicated necessity for obtaining the consent of the other belligerent before granting authority for the passage of the convoy, but this action seems advisable, especially where the passage of a considerable body of sick and wounded is contemplated.

393. Sick and wounded of belligerent convoying same.—The sick and wounded of the belligerent convoying them may be carried through to their own territory. If, however, they are left in the neutral's territory they must be interned so as to insure their not taking part again in the war.

394. Sick and wounded prisoners of war.—Sick and wounded prisoners of war brought into neutral territory as part of a

convoy of evacuation granted right of passage through neutral territory cannot be transported to their own country nor liberated, as are prisoners of war escaping into or brought by troops seeking asylum in neutral territory, but must be detained by the neutral power, subject to the provisions contained in the annex to the Geneva convention of July 27, 1929 (model agreement). (See par. 172.)

395. **Medical personnel.**—The medical personnel belonging to belligerent forces, who have sought asylum and are interned under article 11 (see par. 383), can be released by the neutral and permitted to return to their own state or army. Medical personnel and *matériel* necessary for the care of the sick and wounded of a convoy of evacuation, permitted to pass through neutral territory under article 14 (see par. 390), may be permitted to accompany the convoy. The neutral state may retain the necessary medical personnel and *matériel* for the care of the sick and wounded left in its care, and failing this, may furnish same and will have expense of same refunded by the belligerent concerned after the termination of the war.

396. **Neutral persons.—The nationals of a state which is not taking part in the war are considered as neutrals** ***(H. V, art. 16).***

397. **Neutral persons resident in occupied territory.**—Neutral persons resident in occupied territory are not entitled to claim different treatment, in general, from that accorded the other inhabitants. They must refrain from all participation in the war, from all hostile acts, and observe strictly the rules of the occupant.

398. **Diplomatic agents in occupied territory.**—Diplomatic agents of neutral sovereigns and governments must be treated with all courtesy and be permitted such freedom of action as is possible to allow, with due regard to the necessities of the war.

399. **Punishments.**—All subjects of neutral powers, whether resident or temporarily visiting in occupied territory, may be punished for offenses committed by them to the same extent and in the same manner as enemy subjects.

400. **Forfeiting rights by neutrals.—A neutral cannot avail himself of his neutrality—**

(a) If he commits hostile acts against a belligerent.

(b) If he commits acts in favor of a belligerent, particularly if he voluntarily enlists in the ranks of the armed force of one of the parties.

In such a case, the neutral shall not be more severely treated by the belligerent as against whom he has abandoned his neutrality than a national of the other belligerent state could be for the same act *(H. V, art. 17)*.

401. Acts not favorable to one belligerent.—The following acts shall not be considered as committed in favor of one belligerent in the sense of article 17 b (see par. 400):

(a) Supplies furnished or loans made to one of the belligerents, provided that the person who furnishes the supplies or who makes the loans lives neither in the territory of the other party nor in the territory occupied by him, and that the supplies do not come from these territories.

(b) Services rendered in matters of police or civil administration *(H. V, art. 18)*.

RAILWAY MATERIAL

402. Railway material.—Railway material coming from the territory of neutral powers, whether it be the property of the said powers or of companies or private persons, and recognizable as such, shall not be requisitioned or utilized by a belligerent except where and to the extent that it is absolutely necessary. It shall be sent back as soon as possible to the country of origin.

A neutral power may likewise, in case of necessity, retain and utilize to an equal extent material coming from the territory of the belligerent power.

Compensation shall be paid by one party or the other in proportion to the material used, and to the period of usage *(H. V, art. 19)*.

NEUTRALITY STATUTES OF THE UNITED STATES

403. Certain offenses against neutrality defined by statute.—Supplementing the foregoing rules of international law, there are certain statutes of the United States that define offenses against neutrality and prescribe penalties therefor, some of which are effective only during a war in which the United

States is neutral, and others effective at all times (United States Code, title 18, ch. 2). The enforcement of these statutes devolves primarily upon the civil authorities. Troops employed to aid the civil authorities in such enforcement will be governed by AR 500–50, FM 27–15 (now published as part three, BFM, vol. VII), and the orders of competent authority.

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